

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
vs.) Criminal Action
HERZZON SANDOVAL,) No. 15-10338-FDS
EDWIN GUZMAN,)
CESAR MARTINEZ,)
ERICK ARGUETA LARIOS,)
Defendants)

BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

JURY TRIAL DAY 5

John Joseph Moakley United States Courthouse
Courtroom No. 2
1 Courthouse Way
Boston, MA 02210

February 5, 2018
9:00 a.m.

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22 ALSO PRESENT: Gabriel Haddad, Spanish Interpreter
23 Carrie Lilley, Spanish Interpreter

24

25

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JEFFREY ELLIOT WOOD, JR.				
By Mr. Iovieno		13		
By Mr. Norkunas		20		
By Mr. Murphy		38		
By Mr. Lopez	108			
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EXHIBITS

FOR I.D. IN EVIDENCE

1

PROCEEDINGS

2

THE CLERK: All rise. Thank you. Please be seated.

3

THE COURT: All right. Good morning, everyone. The government has filed a supplemental notice, I guess it is, under *Petroziello*, Document 1928, which concerns the drug conspiracy. I guess it was filed on Saturday. Is this coextensive with the earlier *Petroziello* notice, in other words, is this entirely a subset of that notice?

9

MS. LAWRENCE: Yes, it is, your Honor.

08:32AM 10

THE COURT: Okay. And, obviously, I'm being hypertechnical here, but my plan is to make a *Petroziello* finding as to these statements as against these two defendants for this conspiracy.

14

Do counsel want to be heard on that? Do you want an opportunity to respond in writing? Mr. Iovieno.

16

MR. IOVIEENO: No, your Honor. Briefly, I think there's two statements that relate to my client and his history, if you will, of selling drugs, a source of his supply, and I think there's a statement from one of the CW-s, CW-7, that he was selling cocaine with Muerto.

08:32AM 20

My understanding from the disclosures given last week or the week before from the government following a session of CW-7 was that he said that my client sold cocaine before he joined MS-13, and I took that to mean before my client joined MS-13, so I don't think it's within the scope of the

1 conspiracy. That's what was disclosed to me.

2 MS. LAWRENCE: Your Honor, I think the testimony from
3 CW-1, sorry, CW-7, we expect it to be is that it was prior to
4 CW-7's entry into MS-13, not necessarily Defendant Argueta
5 Larios' membership in MS-13. That's what we understand the
6 testimony will be.

7 THE COURT: Okay. Based on that representation and,
8 obviously, conceivably it could change, I will make the
9 necessary finding as to the statements set forth in Document
08:33AM 10 1928, that is, I find by a preponderance of the evidence that
11 the drug conspiracy existed, the defendants were members of the
12 conspiracy, that is, the two relevant defendants who are
13 Martinez and Argueta Larios, and that the statements were made
14 during and in furtherance of that conspiracy.

15 All right. What else, if anything, do we have to talk
16 about? Mr. Iovieno.

17 MR. IOVIEENO: Yes, your Honor, I don't expect to be
18 too long with Agent Wood. I also spoke to the government, and
19 I was going to attempt to put in the cooperation agreement in a
08:34AM 20 redacted form between the government and CW-1, and I believe
21 the government is willing to stipulate that it's certainly an
22 authentic agreement. I just wanted to raise the issue with the
23 Court concerning, I think an objection on relevancy grounds.

24 MR. POHL: First of all, I appreciate Mr. Iovieno
25 doing it in this fashion. CW-1 is not a witness. There's been

1 a sort of general discussion about, you know, the fact that
2 there was an agreement, but I don't think unless and until CW-1
3 becomes a witness, I don't think the document itself is
4 relevant. It's certainly authentic, it is the right agreement,
5 it's the right document that was discussed during cross on
6 Friday, but I think unless and until CW-1 testifies, it's not
7 relevant.

8 THE COURT: All right. Well, I think it's somewhere
9 between marginally relevant and irrelevant, but I will admit it
08:35AM 10 nonetheless.

11 MR. IOVINO: Thank you.

12 THE COURT: Before I forget, in terms of the schedule,
13 today I'm going to do our two normal breaks. I guess I
14 threatened I'll have only one break because I want to see how
15 this unfolds, but let's have two breaks today.

16 On Wednesday, we're going to have to start at 9:30. I
17 have a very early medical procedure that I can't delay, and I
18 might make it here by 9:00, I might not. We'll call it 9:30,
19 and that day we'll take one break.

08:35AM 20 All right. Anything else?

21 MR. NORKUNAS: We're going to change the order just
22 today briefly, after Mr. Iovino, I'll go only about half an
23 hour followed by Mr. Murphy and Ms. Rodriguez.

24 THE COURT: Only half an hour. I'm indifferent to the
25 order that defendants cross. It's up to you all unless you

1 want me to make a ruling.

2 Mr. Lopez.

3 MR. LOPEZ: Your Honor, I want to bring to your
4 attention that I'm going to try to ask the witness about this
5 ethnographic study of MS-13. It's a book entitled, *Gangsters*
6 *Without Borders*. I'd like to offer it as a learned treatise
7 and use it that way during my cross-examination.

8 THE COURT: All right. I'm not sure the whole thing
9 will come in, but conceivably portions of it will come in.

08:36AM 10 Have you had a chance to see this, Mr. Pohl?

11 MR. POHL: No, your Honor.

12 THE COURT: All right. I think you need to show it to
13 the government if you're going to use it, you need to show him
14 the passages that you're going to use. You can't just hand
15 somebody a book.

16 Mr. Pohl.

17 MR. POHL: If there's nothing else, your Honor, I did
18 want to sort of flag one issue this morning. I don't think it
19 will be a live issue today since I expect that the bulk of
08:36AM 20 today's testimony will involve law enforcement witnesses.

21 THE COURT: Yes.

22 MR. POHL: But I think it's likely that tomorrow the
23 government would put on one of the cooperating witnesses, who
24 is a Spanish speaker, and, you know, I think, we're a couple
25 days into the trial now, and I think both Ms. Lawrence and I

1 were a little surprised on Friday at sidebar when there was a
2 suggestion that there was the possibility that there would be
3 an objection not only as to who some of the speakers might be
4 in these multi-party conversations but to the transcripts
5 themselves because to date, I think we've only received one
6 competing transcript.

7 And in the run-up to the trial, I think our linguists
8 and Mr. Iovieno's transcript have essentially merged to the
9 point where I don't think that's going to be a live issue
08:37AM 10 anymore, and so I just want to alert the Court that we
11 are -- because we, I think, had I think several conversations
12 in court where it appeared to us, anyway, it was clear there
13 was no dispute as to the transcripts themselves, simply as to
14 some of the speakers and the multi-party conversations, and
15 that we don't have any sort of competing type transcripts at
16 this stage.

17 Our plan tomorrow is to use Ms. Huacuja as our
18 interpreter for the cooperating witness who will testify, and,
19 you know, she's also the party that prepared the transcripts,
08:38AM 20 but, you know, I think at this stage, we had every right to
21 expect that that would be an appropriate sort of way to
22 proceed, and I just want to alert the Court that that's what
23 we're doing, and as of this morning, I think that's still an
24 accurate state of play in terms of the transcripts.

25 THE COURT: All right. I guess my initial reaction if

1 there is a competing translation issue, that that's in the
2 nature of expert testimony and will require disclosure
3 beforehand. Let's see how it plays out.

4 Mr. Murphy.

5 MR. MURPHY: Yes, your Honor, I think from our
6 perspective, this is a question of the government turning
7 square corners. I think we've been clear from the beginning
8 that we had concerns with these transcripts and that we
9 expected the government to go through the process that the case
08:39AM 10 law requires, which would require them to put on a witness, who
11 we would have the opportunity to cross-examine about the way
12 that the transcripts were prepared.

13 I understand that's going to be Ms. Huacuja. We have,
14 I think, been clear with the government since January 18th that
15 we objected to Ms. Huacuja serving both as the government's
16 expert translator and as essentially a Court-sanctioned
17 interpreter as well because I think that sends as mixed message
18 and a message that's prejudicial to the defendants for the
19 jury.

08:40AM 20 MR. POHL: I'd say that's most certainly or we're
21 certainly aware of the fact that we have to proceed to
22 authenticate recordings and transcripts, as the case law
23 directs, and as the Court directs, but that most certainly has
24 not been clear.

25 In fact, all of the conversations to date have been

1 that in some of the conversations, I think really the chief
2 issue are the sort of clique meetings where they are long,
3 there's multiple parties speaking, and that it's been the case
4 that drafts over time have undergone changes in terms of who
5 the speakers are.

6 We've had no notice, none, written, and there's been
7 no competing transcripts that would have sort of flagged for us
8 that there is an issue concerning the actual translations
9 themselves that would sort of give the government a notice that
08:41AM 10 they, anyone on the defense team, any of the defendants
11 contested the transcripts.

12 The speakers in the multi-party conversations, that's
13 certainly been flagged, and we certainly know that that's an
14 issue for tomorrow, and we're certainly prepared to meet that,
15 but at this stage, I do not believe Ms. Huacuja should end up
16 being a witness in this trial because there's been no notice
17 whatsoever there's anything wrong with the translations.

18 The most that's been raised fairly I think in court is
19 that some of the defendants object to the fact that the
08:41AM 20 speakers are assigned certain portions of the transcripts, not
21 that there's anything inaccurate about the transcripts
22 themselves.

23 THE COURT: Well, I think I hear Mr. Murphy saying
24 that what they expect is that she will take the stand and say,
25 I did the final translation in this and I speak Spanish and

1 English fluently, and I went through them, and this is how I
2 think it ought to be translated, and Mr. Murphy says, well, we,
3 you know, ought to be able to cross-examine her.

4 I guess it's a question of degree. If they have an
5 entire competing transcript that has not been disclosed, that's
6 problematic. On the other hand, if they say, well, isn't it
7 true that word X has two meanings, you know, meaning A and
8 meaning B, it seems to me that's fair cross-examination, so to
9 some extent, it's a question of degree. You know, if the
08:42AM 10 defense drops something on the government that I think is
11 unfair or that they haven't had, you know, appropriate notice
12 of under the circumstances, I may exclude it.

13 You know, as far as her serving as both a translator
14 and an expert witness, I, frankly, have lost track, has she
15 been -- I thought it was Ms. Lilley and Mr. Haddad were the
16 actual translators at the trial.

17 MR. POHL: I think they are, your Honor. In the
18 November trial, Ms. Lilley and Mr. Haddad were the translators
19 for the in court proceedings.

08:43AM 20 THE COURT: Right.

21 MR. POHL: Though Ms. Huacuja, I believe, was the
22 translator at the witness stand for the Spanish-speaking
23 witness, and that's certainly what we intended to do.

24 THE COURT: And that's what you expect to do?

25 MR. POHL: Correct. I think that's the issue that I'm

1 concerned about and I think Mr. Murphy is raising now.

2 THE COURT: Okay.

3 MR. POHL: Which is I certainly have no concern about
4 calling Ms. Huacuja. She'll accurately, I'm sure, describe the
5 manner and means by which she prepared the transcripts, but
6 since we had no reason to think that there was a problem with
7 the transcripts, we have her as the linguist who will be
8 translating for the witness.

9 THE COURT: She's not an official court translator, I
08:44AM 10 mean, in the sense the jury isn't going to be told I, the
11 Judge, has selected her as a translator?

12 MR. POHL: Oh, no.

13 THE COURT: She is the government's selection of the
14 person to do the translation, so I guess I don't have a problem
15 with that.

16 Mr. Iovieno, did you want to say something? I saw you
17 were starting to rise.

18 MR. IOVIENO: I did. I just want to clarify from my
19 perspective, my client's perspective, I don't want to speak for
08:44AM 20 everybody else, I'm less concerned about the actual
21 interpretation of the transcripts and more with the
22 identification of the speakers, which I believe is the
23 testimonial, so that's my concern.

24 THE COURT: That's been flagged. All right. We'll
25 take it as it goes. All right. Unless there's anything else,

1 Lisa, how are we on jurors?

2 THE CLERK: We have 10 right now, Judge.

3 THE COURT: So as soon as we have a full complement of
4 jurors, we'll get going.

5 THE CLERK: All rise for the jury.

6 (JURORS ENTERED THE COURTROOM.)

7 THE CLERK: Thank you. Court is now back in session.

8 THE COURT: Good morning, ladies and gentlemen.

9 Welcome back. For the record, it was a very disappointing but
08:59AM 10 exciting game yesterday.

11 I had suggested on Friday that we might go with only
12 one break. We're going to try sticking with the two break
13 system for a while here and see whether or not we're falling
14 behind. And just for your planning purposes, Wednesday morning
15 of this week, I have a medical procedure early in the morning
16 that I'm not confident I can be here at 9:00, so we're going to
17 make it 9:30, and we'll take one break that day to make sure
18 we'll get a full day.

19 All right. You understand you're still under oath?

08:59AM 20 THE WITNESS: Yes, sir.

21 THE COURT: Okay.

22 JEFFREY ELLIOT WOOD, JR., RESUMED

23 CROSS-EXAMINATION

24 BY MR. IOVINO:

25 Q. Good morning, Agent Wood.

1 A. Good morning, sir.

2 Q. Let's talk a little bit about the protection details. I
3 have a few questions on that. You indicated that this was a
4 tactic used by the investigation?

5 A. Yes.

6 Q. And it was CW-1, Pelon, who was the individual who went
7 out and solicited and communicated with the individuals that
8 subsequently became involved in the protection details?

9 A. Yes, sir.

09:00AM 10 Q. Okay. And I think you indicated that you personally
11 conducted the surveillance of the October, 2014 protection
12 detail?

13 A. I was one of many on surveillance that day, yes, sir.

14 Q. How many officers or agents were involved with that?

15 A. You've got two SWAT teams, the State Police SWAT team. I
16 don't know how many people they brought. The FBI SWAT team.
17 You had the North Shore Gang Task Force. You had an FBI
18 airplane up.

19 Q. So there was constant surveillance over the entire
09:00AM 20 operation?

21 A. Yes.

22 Q. And is it fair to say that Mr. Larios was not a member or
23 participated in that October 2014 protection detail?

24 A. Not in October, no, he was not.

25 Q. And I think you indicated that you personally went to the

1 evidence room and took out a package?

2 A. I did, sir, yes.

3 Q. And when you do that, when you work for the FBI, it's
4 pretty common you have to fill out some documents to do that,
5 you just can't go take evidence and take it out without some
6 kind of documentation?

7 A. No. We had a chain of custody form.

8 Q. And you filled that chain of custody form out?

9 A. I did.

09:01AM 10 Q. And you also indicated that you field tested the
11 substance?

12 A. I did, yes.

13 Q. And did you also make a report about that field test?

14 A. Yes, I did.

15 Q. And did you put down on that report what the brand and how
16 you went about conducting that field test?

17 A. No, I just say I conducted the field test.

18 Q. You just concluded that I went and conducted a field test,
19 that was it?

09:01AM 20 A. Well, I said I conducted a field test testing for the
21 presence of cocaine and the field test tested positive for the
22 presence of cocaine.

23 Q. And when you did that, you -- I think you testified that
24 you used a knife and you cut into the package and took out some
25 of the substance?

1 A. I don't use the knife to take the cocaine out. The test
2 kit has a little device that you go and you take a little bit
3 out, but I had to cut the packaging material to be able to get
4 into it.

5 Q. So you cut the material, you just didn't cut into it and
6 pull out -- you cut into the package and took out some of the
7 substance and then tested it?

8 A. Correct.

9 Q. And you didn't weigh the substance?

09:02AM 10 A. That I tested or --

11 Q. No, you didn't weigh the substance?

12 A. Not what I took out of the cocaine package, no.

13 Q. But you didn't weigh the package either?

14 A. No, I did. It's in my report.

15 Q. Okay, but you said you field tested it, you didn't say you
16 weighed it?

17 A. I said I tested the cocaine, which I tested.

18 Q. Right, that's what you field tested?

19 A. Correct. You just take a very small amount out. I'm not
09:02AM 20 going to -- once you take a little bit out, there's -- we're
21 not going to weigh it, because if I weigh it, I'm going to
22 spill it all over the place and make a hazmat.

23 Q. Okay. When you test it, when you take a substance out,
24 would you agree with me that the package would weigh a little
25 bit less than it did before you took the substance out?

1 A. The total kilogram?

2 Q. Well, you didn't weigh the --

3 A. I weighed the entire kilogram, and I put that, how much
4 that weighed down in the report.

5 Q. You wrote that in your report?

6 A. Yes, I did.

7 Q. Along with the field test?

8 THE COURT: Hold on.

9 A. So before I field test it, I weigh it, and then after the
09:03AM 10 field test, I weighed it, and it's in my report.

11 Q. It's in your report that you weighed it and field tested
12 it or just field tested it?

13 A. Both.

14 Q. And when did you write that report?

15 A. I wrote that either that day or the following day. I'd
16 have to go and see the report to see the exact dates, but I
17 remember it's on the form.

18 Q. And with respect to any other drug protection detail, did
19 you personally do a field test and personally weigh the
09:04AM 20 substance on any of those other occasions?

21 A. On the other two, I was not present, so, no. I didn't do
22 that.

23 Q. And you spoke a little bit during your testimony about
24 your agreement, if you will, with CW-1. Again, that was a
25 written agreement?

1 A. Yes, Special Agent John Kelley had the informant sign that
2 agreement.

3 MR. IOVIENO: And if I could have the document camera
4 just for the witness, your Honor.

5 Q. I'm going to show you a document --

6 MR. IOVIENO: And I believe, your Honor, there's an
7 agreement that this is a true and accurate copy of that
8 agreement?

9 MR. POHL: That's correct, your Honor.

09:04AM 10 Q. And this is a copy of your agreement you had with CW-1?

11 A. Yes, I remember reviewing that document. I remember
12 seeing that, yes.

13 Q. And it details his obligations to the government and your
14 objections to him; is that fair to say?

15 A. Yes.

16 MR. IOVIENO: I would offer that, your Honor.

17 THE COURT: All right. It needs a number -- what --

18 THE CLERK: 224.

19 THE COURT: 224. It's admitted, Exhibit 224.

09:05AM 20 (Exhibit No. 224 received into evidence.)

21 Q. And there is a specific section in this exhibit for the
22 compensation that was going to be paid to CW-1 during this
23 investigation, correct?

24 A. Yes, that is correct.

25 Q. And, sir, during your investigation, I assume you were

1 concerned about protecting CW-1?

2 A. Yes.

3 Q. All right. And you were aware of the people that
4 surrounded him in his every day life; is that fair to say?

5 A. I'm not sure what you mean by --

6 Q. Well, when he was out in the street for the three-year
7 period, if you will, you wanted to make sure that the people he
8 was surrounding -- his inner circle, if you will,
9 girlfriends -- well, he had a girlfriend, correct?

09:06AM 10 A. He did have a girlfriend, yes.

11 Q. And her name was Margarita?

12 MR. POHL: Objection.

13 THE COURT: Sustained.

14 Q. He had a girlfriend?

15 A. He did.

16 Q. Okay. Did you know the history of that young woman?

17 MR. POHL: Objection.

18 THE COURT: Sustained.

19 MR. IOVIENO: May I approach, your Honor?

09:06AM 20 THE COURT: No, put another question.

21 Q. Were you aware that the individual that was CW-1's
22 girlfriend was Mr. Larios's former girlfriend?

23 MR. POHL: Objection.

24 THE COURT: Sustained.

25 Q. But CW-1 had a girlfriend, correct?

1 A. Yes.

2 Q. Did he end up marrying that girlfriend?

3 MR. POHL: Objection.

4 THE COURT: Sustained.

5 MR. IOVINO: I have no further questions, your Honor.

6 THE COURT: Okay. Mr. Norkunas.

7 MR. NORKUNAS: Thank you, Judge.

8 CROSS-EXAMINATION

9 BY MR. NORKUNAS:

09:07AM 10 Q. Good morning, Mr. Wood.

11 A. Good morning, sir.

12 Q. I'm Stanley Norkunas, and I represent Cesar Martinez in
13 these proceedings.

14 A. Yes, sir.

15 Q. And I have a few questions for you. If I can see
16 Exhibit 32.1, please. I'd like to show you, again, the exhibit
17 that was shown by the government to you, 32.1, which was the
18 fight in the garage.

19 A. The video?

09:07AM 20 Q. The video, right. It might be 32.2.

21 (Video was played in Spanish)

22 Q. Once that was shown the first time, Mr. Pohl had asked you
23 a question, did you see these defendants depicted in that, and
24 you had said yes. Is it fair to say none of these individuals
25 were shown in that specific exhibit; is that correct?

1 A. I don't -- when I first watched this video, it was two
2 years ago, and that's when my law enforcement partners pointed
3 out everyone to me. I haven't reviewed it enough to have it
4 refresh my memory exactly who was where, so I don't know if I
5 can answer that question right now. I'd have to sit down and
6 review it with my partners again that helped me identify people
7 last time.

8 Q. As you looked at it here today, it's fair to say you had
9 no recognition of any of those individuals being any of these
09:09AM 10 four individuals here in court, correct, as you just saw it on
11 the screen?

12 A. No, I thought -- I believe I identified or saw Playa,
13 which is Edwin Guzman in there. I can't --

14 Q. But you're not sure?

15 A. No.

16 Q. Okay. And that's the best that you could say, right?

17 A. Yes.

18 Q. You may have seen someone, one person. Now, in relation
19 to --

09:10AM 20 MR. NORKUNAS: Could I have Exhibit 1.1, please.

21 THE COURT: I'm sorry.

22 THE CLERK: What exhibit is this?

23 MR. NORKUNAS: 1.1.

24 Q. You had indicated that this is a photograph of the garage
25 where you believe the ESLS was holding meetings; is that

1 correct?

2 A. No, I know this is where they were holding meetings.

3 Q. At one of the sites, though. There was also a second
4 site, correct, in Cambridge?

5 A. Yes.

6 Q. And that was a parking garage, correct?

7 A. That is right.

8 Q. A public parking garage?

9 A. Yes, that is correct.

09:10AM 10 Q. And in relation to that particular location in Cambridge,
11 did you do any type of videotaping of the individuals going to
12 that location or coming from that location?

13 A. When I joined the investigation --

14 Q. That would be a yes or no answer.

15 A. Oh, personally, no, I did not.

16 Q. And in relation to this particular location, this was, in
17 fact, a working garage, right?

18 A. It was a working garage, yes.

19 Q. And the -- shown in some of the videos, there's tires on
09:11AM 20 the side, there's tool cases, all of the things, there's lists
21 of cars, correct?

22 A. Yes, this is a working garage, yes, sir.

23 Q. Okay. And in relation, therefore, to the working garage,
24 the individuals who worked in there did not want any disruption
25 to their activities, so any individuals that came in to hold

1 any type of group meeting would have to do it after the garage
2 had closed for the day, correct?

3 A. Yes, all the meetings I attended and were involved in in
4 surveillance took place after business hours.

5 Q. And in relation to the individuals that worked there, did
6 you become aware that Mr. Martinez also was doing mechanical
7 work in that garage?

8 A. Yes.

9 Q. And additionally he also had a tow truck, right?

09:12AM 10 A. I wasn't aware of the tow truck, but if you say he had a
11 tow truck, I'll --

12 THE COURT: Well, hold on. He's the lawyer, you're
13 the witness. If you don't know, you don't know.

14 THE WITNESS: I don't know.

15 Q. Did you ever see kind of a fancy tow truck pulling up to
16 that garage with "CM Towing" on the side?

17 A. No.

18 Q. Did you ever have pole cameras situated outside of that so
19 you could monitor the activity that was coming and going?

09:12AM 20 A. I don't believe we did.

21 Q. Now, and in relation to the garage itself, did you ever do
22 any monitoring during what would be considered normal work
23 hours for the garage?

24 A. I drove by the garage on a couple of occasions during work
25 hours just to get a lay of the garage surveillance on it, but

1 we did not, as far as I know, do any constant surveillance
2 during working business hours.

3 Q. But, again, you became aware that Mr. Martinez did
4 mechanical work out of that garage?

5 A. Yes.

6 Q. And in terms of whether this was 40 hours a week, 80 hours
7 a week, that's not something you had monitored?

8 A. No, I didn't pay attention to his work hours there.

9 Q. In relation to the investigation itself, would it be fair
09:13AM 10 to say that one of the principles of conducting any long-term
11 investigation is to find out as much as you can about the
12 people that are under investigation?

13 A. Yes.

14 Q. So if Mr. Martinez is a person under investigation, you
15 want to know is he working, right?

16 A. We knew that the majority of people we were investigating
17 were working.

18 Q. You'd want to know are they paying taxes, right?

19 A. I'm not -- in this case, we weren't really paying
09:14AM 20 attention to whether they were paying taxes or not.

21 Q. Well, you indicated you had a multiplicity of governmental
22 agencies assisting you, right?

23 A. Yes.

24 Q. Through those various agencies, through the various
25 procedures that Congress has implemented, you can obtain a

1 great deal of records about someone that is under
2 investigation, correct?

3 A. Yes.

4 Q. And if you want to, you can find out -- because ICE was
5 working with you, you could find out through ICE what the
6 person's status is, correct?

7 A. Yes.

8 Q. And if you wanted to find out about financial information
9 on people, various things such as the Patriot Act or something
09:14AM 10 else, you can get financial records on people, correct?

11 MR. POHL: I'm going to object.

12 THE COURT: Sustained. You're asking, in part, a
13 legal question. I guess I'll caution the jury that tax records
14 have elaborate procedures to protect them and law enforcement
15 agencies other than the IRS normally do not have access to
16 those records. Go ahead.

17 Q. You can get bank records?

18 A. I can, yes.

19 Q. Okay. Did any of that -- was any of that information
09:15AM 20 collected against Mr. Martinez in this case?

21 A. I don't think we did, no.

22 Q. And you also established where he lived and which home in
23 Chelsea, correct?

24 A. Yes.

25 Q. And you went over at some point in time and monitored that

1 residence, right?

2 A. Personally me, no.

3 Q. Someone from the task force, right?

4 A. I'm sure we did, yes.

5 Q. And you found out that he had a daughter living with him,
6 right?

7 MR. POHL: Objection.

8 THE COURT: Sustained.

9 Q. And in the context of doing that as part of the
09:16AM 10 investigation, did you determine if there was anyone else
11 living there with him?

12 A. I don't remember what we determined, who was living there
13 besides him.

14 Q. Now, I mentioned a moment ago about the types of
15 investigative tools that you could use and are available to
16 you. In this particular case relative to the phone calls or
17 phone records, you did implement some procedures, correct? You
18 had toll records and you had pen registers, right?

19 A. We did have toll records, we had pen registers, yes.

09:16AM 20 Q. And when I say "we," I'm talking about the task force as a
21 whole, correct?

22 A. Yes.

23 Q. And if you needed to, there was also the availability of
24 GPS monitoring for cars, correct?

25 A. Yes.

1 Q. And what that does for you, if you want to know where a
2 car goes, how often it goes, you can monitor it through that
3 system, correct?

4 A. Yes.

5 Q. And, again, you didn't use pole cameras, but that would
6 have been available to you, correct?

7 A. Yes.

8 Q. In terms of what was available to you, in 2013 I believe
9 is when you said CW-1 was brought up to the United States, is
09:17AM 10 that correct, or was it the end of 2012?

11 A. It was either the end of 2012 or early 2013. I wasn't the
12 case agent at that point, so I wasn't as familiar with the CWs
13 comings and goings at that point.

14 Q. Would it be fair to say that from your knowledge as a
15 special agent of the FBI and in terms of the other gang
16 investigations you had done, there was quite an availability of
17 sophisticated electronic equipment available if you wanted to
18 monitor something, like a meeting?

19 A. It depends. That's a very hard question to fully answer
09:18AM 20 because --

21 Q. Let me see if I can give you something a little bit
22 easier. 2012, there are things, micro miniature cameras, I
23 think some of them are called "Go Cameras," correct?

24 A. I don't know Go Cameras. I know our recording equipment.

25 Q. Ultimately with CW-1, you end up having him use a small

1 camera that's placed on the bill of a baseball cap, correct?

2 A. I don't think we used the baseball hat with him. I know
3 we used different recording equipment, so I don't remember
4 every place we hid the recording equipment. We had many
5 different locations that we hid the recording equipment.

6 Q. But you don't -- your position was you don't believe you
7 had the sophisticated enough equipment to place on him until
8 some time in 2014 to go into these meetings, correct?

9 A. That is correct, yes.

09:19AM 10 Q. Now, once the meetings were done, there was -- CW-1
11 himself is not carrying -- or is he, he's not carrying a
12 monitor so that he would have the recorded information on his
13 body, correct? He's transmitting it outside to someone else?

14 A. No, that's incorrect.

15 Q. Whatever he was wearing would actually record both audio
16 and video?

17 A. Sometimes just audio, sometimes audio and video.

18 Q. But the equipment was on his body that was doing it or
19 clothing he's wearing as well, right?

09:19AM 20 A. That is correct.

21 Q. So once that comes out, you now have to take that, do
22 something with it so that it becomes some sort of a usable
23 product for you, right?

24 A. That is correct, yes.

25 Q. And everything that you were initially handling was in

1 Spanish, correct?

2 A. Yes, that is correct.

3 Q. And as a result of that, you have to send those out to get
4 them translated, correct?

5 A. Most stayed within the FBI Boston division or within the
6 task force, but there was a few that once we had some drafts on
7 for the finalization would be sent out to translators who have
8 already worked on the case that were initially brought into the
9 Boston Division, then went back to their field offices and then
09:20AM 10 we'd send the information back there for them to finish.

11 MR. NORKUNAS: Could I have the Elmo just for the
12 witness, please.

13 Q. I'm showing you a document. Do you recognize what
14 that -- to yourself, just yes or no, do you recognize what that
15 depicts?

16 A. Yes.

17 Q. And that deals with the translation of a particular
18 recording, correct? It's a cover sheet for it, right?

19 A. Yes, sir.

09:21AM 20 Q. And that indicates that it was done out of the Tampa
21 Division in Tampa, Florida, correct?

22 A. Yes.

23 Q. And also were recordings sent to other divisions? Showing
24 you another one, do you recognize what that depicts?

25 A. Yes.

1 Q. And was that sent to -- it says an L and an A. Would that
2 be Los Angeles?

3 A. I think the office is Houston from the HO.

4 Q. And this one would show that a tape was sent where?

5 A. I believe that's for the -- I could be wrong, but I
6 believe OC stands for Oklahoma City for Oklahoma City office.

7 Q. All right. Oklahoma. And this one would show you the
8 tapes were sent to Houston, Texas?

9 A. Yes, sir.

09:22AM 10 Q. Now, and then within the Boston Field Office, there were
11 numerous individuals who also did transcribing, correct?

12 A. Yes, sir.

13 Q. And it would be fair to say when these folks were doing
14 their transcriptions, they were doing the Spanish to the
15 English, right?

16 A. Yes, sir.

17 Q. And it would also be fair to say when they're doing their
18 transcriptions, you didn't have any of your cooperating
19 witnesses flying to Houston, Tampa, Florida, Oklahoma City to
09:23AM 20 do any type of assistance with those?

21 A. Well, as I mentioned previously --

22 THE COURT: Let him answer.

23 A. We brought people here, and at that point that's when our
24 CW helped listen. We also had most of all of our recordings
25 were also reviewed by Trooper Estevez and Trooper Depena. And

1 then once we had rough drafts and everything, we sent them back
2 to people who had already worked on them when they were here,
3 so I would say when they were shipped out, we had already had
4 that initial review done before they went back out to the other
5 field offices.

6 Q. It's fair to say as you had looked at where there was a
7 video or had listened to the audio, on all of these it was a
8 multiplicity of voices speaking, most of the time together,
9 right? People would cut each other off, people would step in,
09:24AM 10 correct?

11 MR. POHL: Objection.

12 THE COURT: Well, I assume he's seen the video. I'll
13 let him answer, go ahead.

14 A. There are times where people -- there are people talking
15 and sometimes they cut over one another, yes.

16 Q. And when the videos were sent out to -- for the initial
17 translation, they're sent out to people that have no awareness
18 of who anybody in a room may be, correct?

19 A. Well, no, that's incorrect because we didn't do that. I
09:24AM 20 just testified to the fact that Trooper Depena and
21 Trooper Estevez typically reviewed everything before anyone
22 else got it just to get an overview of what happened. And then
23 we also would start work here and we brought people from all
24 those other field divisions to Boston, and they would review it
25 here, and then once we needed to start getting more of a

1 draft -- from the draft to a formalized version, then we sent
2 it back to those people who had already worked on it, so they
3 were already familiar with it.

4 Q. So, again, the individual that would work on it out of
5 Oklahoma City prepares a cover sheet that says, "Oklahoma
6 City." That task was actually done in Oklahoma City?

7 A. It says name and office of linguist.

8 Q. Right.

9 A. So, name and office of linguist. If she's assigned to
09:25AM 10 Oklahoma, whether she's sitting here, she's still listing her
11 office, because it says name and office of linguist. So,
12 again, we brought linguists here to Boston to help us, and then
13 once we got done the initial, here are our drafts, they were
14 not finalized versions, they were very draft oriented, they
15 went back to their field offices, and then when we said, oh, we
16 need this done more, we sent it back to the person who already
17 worked on it and sent it to that field office.

18 Q. So you flew in everybody, a myriad of translators,
19 linguists from the FBI to Boston?

09:26AM 20 A. Yes, we did. From October to January, we had several
21 linguists from around the country sitting here going over all
22 our video and audio recordings.

23 Q. Now, was there ever a collective meeting, to your
24 knowledge, of the linguists where somebody is saying I think
25 that was Fred, somebody saying I think that was John and

1 somebody is correcting them?

2 A. I don't ever remember a group of linguists sitting
3 together. Each linguist got a recording, and during that
4 timeframe we brought the CW in with Trooper Brian Estevez and
5 Trooper Jose Depena, and they would sit down with the linguists
6 going over everything, so that they would make sure that they
7 could ensure that the linguists knew who was talking, knew what
8 was being said because in Spanish even though you may be from
9 Spain, you have a different dialect in Puerto Rico and
09:27AM 10 Puerto Rico to Chile, and there's all these different dialects.

11 So we had some people that came in that were very
12 knowledgeable of the El Salvadoran dialect, others that
13 weren't, and so Trooper Depena, Trooper Estevez, who had been
14 listening to these recordings for a while now, had very
15 distinct knowledge of those, that dialect. The CW knowledge of
16 that dialect would be able to explain the nuances of each
17 conversation that was going on.

18 Q. A lot of the conversation that was taking place with these
19 gentlemen was slang incident only to El Salvador, correct,
09:28AM 20 street slang?

21 A. Which is what I just said, yes.

22 Q. Now, in context of your position as the case agent in this
23 particular case, would it be fair to say that it's appropriate,
24 on occasion, to look at preceding reports, such as if you took
25 over in 2015 as the case agent, you would still go back on

1 occasion and look at 2012 or 2013 reports of other members of
2 the task force, correct?

3 A. Yes, we can do that. Yes.

4 Q. And you've testified in this case on numerous occasions,
5 correct? You, yourself, have testified in relation to the
6 overall context of MS-13 on numerous occasions?

7 A. Well, we've only had one trial before this one, so that
8 would be twice for testifying in this case.

9 Q. Well, you prepared affidavits under oath, right?

09:29AM 10 A. Yes, sir.

11 Q. You testified before a grand jury on many occasions,
12 correct?

13 A. Yes, sir.

14 Q. And in each and every one of those occasions when you used
15 a nickname for my client, that was C-h-e-C-h-e, correct?

16 A. CheChe, yes.

17 Q. And when you looked at the reports of other individuals in
18 this particular case, it's also fair to say that the agents
19 associated with the case were using that same CheChe,
09:29AM 20 C-h-e-C-h-e, correct?

21 A. I believe so.

22 Q. And including right up to the time of the arrest of
23 Mr. Martinez, the name referenced in the reports is CheChe,
24 C-h-e-C-h-e, correct?

25 A. I believe that's correct.

1 Q. Now, are you familiar with, I'm showing you a report
2 that's dated from November of 2015 about an October of 2015
3 meeting, and in the context of that I'm going to flip the page.
4 There had been references to an outside meeting in Everett, and
5 there had been someone who had participated in that and came
6 out to you at some point in time and indicated to some agent, I
7 think you are listed, and talked about the people that were
8 there. Is your memory refreshed about that?

9 A. Yes.

09:31AM 10 Q. And within that, he indicated there was someone he did not
11 know their full name and when you don't know someone's full
12 name, is there an abbreviation that's consistently used?

13 A. Yes.

14 Q. What is that?

15 A. First name unknown, last name unknown and once I've
16 spelled it out at point, then I say FNU/LNU.

17 Q. FNU/LNU is the common symbolism for that, right?

18 A. Yes.

19 Q. And that means first name, as you said, unknown, last name
09:31AM 20 unknown?

21 A. Correct.

22 Q. And he said there was a person in there, he didn't know
23 who that was, but he knew -- he claims he knew other people
24 present, but that person who he didn't know had the name of
25 CheCha, correct?

1 A. I see that, yes.

2 Q. Okay. And that was in October of 2015, correct?

3 A. Yes.

4 Q. Now, I believe that you have talked to Mr. Pohl and
5 Mr. Iovieno about the purpose of the protection details, and
6 basically the purpose of that was people that would not be
7 selling drugs, but you're looking to see if you can somehow get
8 them involved in drugs was the purpose of putting together by
9 the FBI protection details around the country, right?

09:32AM 10 A. We've done that around the country where we used
11 protection details, yes.

12 Q. Within that concept, right? You come to me, you're not
13 going to be able to make a buy, I'm not doing drugs, but you
14 may be able to lure me into a protection detail involving
15 drugs, correct?

16 A. I wouldn't say "lure," I would say -- I would ask if you
17 would volunteer to help me protect my drug shipment.

18 Q. And finally in regard to your testimony in this particular
19 case, let me just go back for one extra question for you in
09:33AM 20 response to that. You didn't participate -- your participation
21 was October, December of 2014 in protection details, correct?
22 Actual participation.

23 A. Actual participation for surveillance or something
24 involved was in October. In December, I was helping -- for the
25 December one, I had helped at the -- what we call the -- we say

1 Curoc (ph), but it's just an undercover meeting where we get
2 supervisors in the Bureau and the executive management of the
3 Bureau to agree to this kind of -- to agree to an undercover
4 operation, so I was the supervisor for the squad when we had to
5 get that approval.

6 Q. Okay. And the ones in October and December, Mr. Martinez
7 was not involved with those, correct?

8 A. No, he was involved in the first one.

9 Q. Well, that was one back in when?

09:34AM 10 A. That was in the earlier part of 2014.

11 Q. And you were not involved with that, correct?

12 A. That's correct.

13 Q. Now, were there any rules or were there rules in place
14 that you were aware of for the group that using drugs
15 recreationally, you would be punished?

16 A. I knew the rules saying that you weren't allowed to be
17 publicly intoxicated or high because if you brought something
18 bad onto the clique, that was a punishable offense.

19 Q. And if you missed meetings, you would get punished?

09:35AM 20 A. Yes, you could be punished for missing meetings.

21 MR. NORKUNAS: Thank you, I have nothing further.

22 THE COURT: Mr. Murphy.

23 MR. MURPHY: Thank you, your Honor.

24

25

1

CROSS-EXAMINATION

2 BY MR. MURPHY:

3 Q. Good morning, Agent Wood.

4 A. Good morning, sir.

5 Q. My name is Marty Murphy, and I represent Herzzon Sandoval.

6 He's the person you've identified as Casper, correct?

7 A. Yes, sir.

8 Q. Now, you testified on direct examination about the origins
9 of MS-13, correct?

09:36AM 10

10 A. Yes.

11 Q. And as you understand it, MS-13 started in Los Angeles?

12 A. Yes.

13 Q. And it was started by immigrants from El Salvador who'd
14 fled El Salvador's civil war, correct?

15 A. Yes, sir.

16 Q. And oftentimes their legal status in the United States was
17 uncertain, correct?

18 A. Yes, sir.

19 O. And oftentimes you've learned that they joined MS-13

09:36AM 20

20 because they faced risks from other gangs in the Los Angeles
21 area, correct?

22 A. Yes.

23 Q. Now, you've identified Mr. Sandoval as one of the leaders
24 of ESLS correct?

25 A. He was the first word, yes, sir.

1 Q. And that was the group of men that you testified met in
2 that Norman Street garage we've seen photos of, correct?

3 A. Yes, sir.

4 Q. Now, is it fair to say that you don't know when
5 Mr. Sandoval first became affiliated with ESLS?

6 A. I don't know, no.

7 Q. And you don't know anything about the circumstances that
8 led him to do that, correct?

9 A. That is correct.

09:37AM 10 Q. And you don't know, for example, to the extent
11 Mr. Sandoval has tattoos, you don't know when he got those,
12 correct?

13 A. I don't know when he got tattoos, no.

14 Q. Or what the circumstances were that led him to get those
15 tattoos, correct?

16 A. No.

17 Q. Now, you testified -- let me ask you. In 2013 and 2014
18 and 2015, I think you said, that's when CW-1, the person who
19 was known as Pelon, was recording conversations in that Norman
09:37AM 20 Street garage, correct?

21 A. Yes, sir.

22 Q. And also some in 2016, correct?

23 A. I think we only had one, we may have had two in 2016. I
24 don't remember the exact amount right off the top of my head.

25 Q. But before 2014 and 2015 and 2016, as early as before he

1 began recording those meetings, you sent or the FBI sent Pelon,
2 CW-1, out to gather intelligence about the activities of
3 cliques in the Boston area, correct?

4 A. Yes.

5 Q. And one of his objectives was to ingratiate himself with
6 clique members in the Boston area, correct?

7 A. To get to know them, yes.

8 Q. Well, was his job to ingratiate himself?

9 A. My first recollection is that he was there to meet MS-13
09:38AM 10 clique members and pose as a drug dealer and start to
11 infiltrate them.

12 Q. You testified that even though you were not the case agent
13 in 2014 and 2013, you did monitor the reports that were
14 written, correct?

15 A. I didn't read the reports, all of them, but I did talk to
16 the case agents, both federal and state and local members of
17 the task force to keep myself apprised of the on-goings of the
18 case, yes.

19 Q. So you knew the major things that were going on, correct?

09:39AM 20 A. Yes.

21 Q. After you became the case agent, I think you testified in
22 response to Mr. Norkunas' questions, you did go back and look
23 at the reports that had been done?

24 A. I said that I could have and I reviewed a couple, but I
25 didn't go and read every single report that was written before

1 I became the case agent.

2 Q. So your testimony then about what happened in 2013 and
3 2014 is based on what you learned from the folks that you were
4 working with, sort of your office mates?

5 A. Well, some from reviewing the reports and some from my
6 conversations with Sergeant Millett, Special Agents Ben
7 Wallace, Dave Cederleaf, John Kelley and Detective Scott
8 Connolly.

9 Q. And all those people during that period were writing
09:40AM 10 reports, correct?

11 A. Well, not every single person in that group wrote reports,
12 but some of them did, yes.

13 MR. MURPHY: If I could have the document camera for
14 the witness only, please.

15 Q. Showing you a document dated October 16, 2013, do you
16 recall reading this report, sir?

17 A. I did not read that report, no.

18 Q. Do you recall, sir, that as part of the effort to get to
19 know other clique members in the Boston area, the FBI gave
09:40AM 20 CW-1, Pelon, cigarettes, women's handbags, and sunglasses to
21 give out?

22 A. I did not know that until I just read that document.

23 Q. Now, there were many meetings that Pelon CW-1 went to that
24 he did not record, correct?

25 A. Yes, sir.

1 Q. And whether he recorded the meetings or not, it was
2 typical, wasn't it, for agents to sit down with Pelon and brief
3 him afterwards, correct?

4 A. I would say debrief him afterwards.

5 Q. Fair enough. So they would debrief him. That is, he
6 would give them an account of what was going on?

7 A. That is correct, yes.

8 Q. And that provided useful intelligence to the agents
9 conducting the investigation about what was happening in the
09:41AM 10 field, correct?

11 A. I would say yes.

12 Q. And it was part of the intelligence that you were hearing
13 about as you were paying attention to what was going on in your
14 office relating to this investigation, correct?

15 A. Yes.

16 Q. And even after there are transcripts done of reports --
17 let me ask the question a different way. The investigation was
18 moving pretty quickly, correct, in 2013, 2014? Things were
19 happening on a day-to-day basis?

09:42AM 20 A. I knew that there would be times when things didn't happen
21 quickly. I knew that when I became the co-case agent in 2015
22 that things moved quickly constantly. I couldn't tell you how
23 things were playing out on a day-to-day basis in '13 or '14.

24 Q. Is it fair to say, though, that these debriefings that you
25 were getting from Pelon, the FBI would proceed and make

1 strategic decisions about what to do next based on these
2 debriefings because the investigation was generally moving
3 faster than the ability to get formal translations of any tapes
4 you recorded?

5 A. I don't -- I wouldn't be able to answer that the way
6 you're phrasing it because, again, I wasn't a part, and if I
7 remember correctly, things didn't move as quickly as they did
8 in 2015.

9 Q. These debriefings that the agents conducted of Pelon,
09:43AM 10 CW-1, the agents typically wrote reports to document what Pelon
11 had said in them, correct?

12 A. Yes.

13 Q. And this was part of the information that the agents
14 working on the case then found valuable in understanding what
15 was happening in the cliques in the Boston area, correct?

16 A. I would imagine so.

17 Q. And, sir, when you were describing the kind of
18 intelligence that gets shared by law enforcement agencies about
19 MS-13, intelligence reports like that form a significant part
09:43AM 20 of the basis that leads to law enforcement's understanding of
21 what MS-13 is and what it's doing, correct?

22 A. I think you're trying to put too much into one question.
23 I can -- I would say before we released an intelligent document
24 that goes out around the country, we've corroborated
25 everything, so if we have an uncorroborated report, we're not

1 going to release that information --

2 Q. Okay.

3 A. -- because we haven't corroborated it.

4 Q. So an uncorroborated report. What's an uncorroborated
5 report, sir?

6 A. Well, if our CW comes and tells us something, we listen to
7 it, we look at it, we evaluate it, but I'm not going to let the
8 entire law enforcement community throughout the United States
9 know that this is gospel for MS-13. I'm going to wait and see,
09:44AM 10 oh, do we have a recording of it. Then I can review the
11 recording, compare it to what he said, and if they match, now I
12 have it corroborated, because it's -- we have evidence that
13 what he's saying is truthful. Just because he told us
14 something, we want to make sure we have other ways to back that
15 up.

16 Q. Right. And you recognize, sir, that you wouldn't rely on
17 something a cooperating witness told you without that kind of
18 corroboration, correct?

19 A. Correct.

09:45AM 20 Q. So if a corroborating witness tells you something and
21 there's no tape of it, that's not something that in your
22 judgment should be viewed as worth relying on, correct?

23 A. I wouldn't say that the way you just phrased it, sir. I
24 would say I would look at it, but I'm not going to bring that
25 into court as evidence, based -- unless I have, oh, here, it's

1 on tape.

2 If you look at our case, everything we have that we're
3 charging is on tape, so I'm not going to say it's worthless,
4 it's just I'm not going to use that as my evidence unless I
5 have somebody else saying it or, as I said, on tape.

6 Q. Fair enough. Now, you testified that in 2015 you went to
7 El Salvador, correct?

8 A. I did.

9 Q. And when you were in El Salvador, you learned that the
09:45AM 10 leaders of MS-13 in El Salvador were trying to implement
11 stricter rules about how the cliques in the United States
12 should operate, correct?

13 A. Yes.

14 Q. And they wanted the cliques in the United States to
15 operate, essentially, more like the organization operated in
16 El Salvador, right?

17 A. That is correct.

18 Q. El Salvador is, unfortunately, a very violent place, you
19 would agree?

09:46AM 20 A. Yes.

21 Q. It has one of the highest murder rates in the world?

22 A. I believe it has the highest murder rate in the world.

23 Q. And it's been that way since the civil war that you talked
24 about, correct?

25 A. I can't testify going all the way back to the '70s and

1 '80s.

2 Q. Okay. But MS-13 in El Salvador is also in what's known as
3 the rent collection business, correct?

4 A. Yes.

5 Q. And could you explain to the members of the jury what the
6 rent collection business is?

7 A. In an MS-13 controlled neighborhood, the MS-13 gang
8 members extort every business, whether it's trucks coming in to
9 deliver supplies, goods, the bodegas, the taxicab drivers. So
09:47AM 10 everyone has to pay money to MS-13, and they collect that
11 money.

12 Q. And, in addition, you learned in 2015 that MS-13 wanted to
13 make sure that the cliques in the United States were sending
14 money to MS-13 gang members in prisons in El Salvador, correct?

15 A. Well, they were already doing that before 2015, but they
16 wanted to set it up in a different process than before.

17 Q. They wanted to centralize it, correct?

18 A. Well, they wanted to go through the programs.

19 Q. To make it more like it was in El Salvador?

09:47AM 20 A. Yes.

21 Q. Now, you learned about -- you say you learned about these
22 efforts in 2015?

23 A. Yes.

24 Q. Do you recall, sir, learning that CW-1 was telling task
25 force agents about the leadership in El Salvador's efforts to

1 centralize control as early as 2013?

2 A. I'm not aware of that, no.

3 Q. Do you recall, sir, learning that the leaders in
4 El Salvador, learning that Pelon was telling agents as early as
5 2013 that the leaders in El Salvador wanted to impose the same
6 rules on the cliques here as were imposed on MS-13 members in
7 El Salvador?

8 A. Again, as I just said, I didn't learn about the programs
9 until 2015.

09:48AM 10 Q. Well, my question, sir, was about whether the leaders in
11 El Salvador, as early as 2013, whether you learned that they
12 wanted to apply El Salvador rules to cliques in the Boston
13 area?

14 A. I wasn't that involved in the investigation to know the
15 extent of what was being told and what was said. I knew I
16 heard from my partner once about East Coast Program. I didn't
17 really know what he meant until I went to El Salvador and then
18 I fully understood what the programs were.

19 Q. Do you recall learning in 2013 that Pelon told agents that
09:49AM 20 MS-13 in El Salvador wants the same rules applied to cliques in
21 the U.S. as they are in El Salvador?

22 MR. POHL: Objection.

23 THE COURT: I think you've asked that three times now,
24 Mr. Murphy.

25 MR. MURPHY: Thank you, your Honor.

1 Q. Did you learn in 2013 whether Mr. Sandoval had a
2 particular point of view about that?

3 MR. POHL: Objection.

4 THE COURT: Particular -- you'll have to rephrase.
5 Sustained.

6 Q. Did you learn from the agents you were working with that
7 Pelon had collected information about Mr. Sandoval's views
8 about the orders that were being issued by El Salvador?

9 MR. POHL: Objection.

09:50AM 10 THE COURT: Overruled.

11 A. I didn't know anything until 2015.

12 Q. So --

13 MR. MURPHY: Could I have this just for the witness,
14 please, on the document camera.

15 Q. If I show you a document dated February 17th -- I'm sorry,
16 February 7, 2014, is that a document you recall reading in
17 connection with this investigation?

18 A. I did not read that document, no.

19 Q. And that's a report written by one of your fellow agents,
09:50AM 20 sir?

21 A. That was written by -- I'd have to see the bottom of the
22 document to see who actually wrote it, but there were two
23 agents there. That was written by David Cederleaf, a
24 Special Agent with the FBI.

25 Q. So that's not a document that you've seen before today; is

1 that correct?

2 A. That's correct.

3 Q. Do you recall learning anything about efforts in 2014 by
4 El Salvador to require cliques here to send money to
5 El Salvador for people in prison?

6 A. I knew that money was being sent back to El Salvador all
7 along. I've known that for a while.

8 Q. Do you recall learning in 2014 that that was something
9 that Mr. Sandoval did not want to do?

09:51AM 10 A. I wasn't aware of anything in 2014 along those lines.

11 Q. So if I were to show you --

12 MR. MURPHY: If we could have this just for the
13 witness, please.

14 Q. -- a report dated February 12, 2014?

15 A. I didn't read that report, no.

16 Q. And who was that report written by?

17 A. Special Agent David Cedarleaf.

18 Q. And is it a report about something that -- one of his
19 debriefings with Pelon?

09:52AM 20 A. Correct.

21 Q. But did you recall learning in February 2014 that
22 Mr. Sandoval had told Pelon that he didn't want things in the
23 cliques in the Boston area to be run the way they were in
24 El Salvador?

25 A. No.

1 Q. And if I were to show you -- for the witness only,
2 please -- a report dated February 13, 2014. Do you see that,
3 sir?

4 A. I'm reading it right now. I didn't read that report, but
5 there were a few items that I had been be briefed about, but
6 that was it.

7 Q. So you did not read -- this is another report that was
8 written by -- let me turn the page over -- by Special Agent
9 Cedarleaf?

09:53AM 10 A. That's correct.

11 Q. And that's not a report that you read before today?

12 A. That is correct.

13 Q. Now, did the task force investigate a shooting that
14 occurred in April 2014? April 2014, pardon me.

15 A. We -- I wasn't a part of the investigation then. I knew
16 there was some brawls going on in Chelsea. I'd have to be more
17 specific of what shooting because there were lots of shootings,
18 stabbings that occurred.

19 Q. Do you recall learning in April 2014 that Mr. Sandoval
09:54AM 20 told Pelon, CW-1, that he thought Tremendo -- and who's
21 Tremendo?

22 A. Another MS-13 gang member.

23 Q. That he was angry with Tremendo for acting like he's in
24 El Salvador, correct?

25 A. I wasn't aware of that conversation, no.

1 Q. And if I show you a -- on the document camera, a report
2 with the date of April 29, 2014, did you read that report
3 before you came here last week to testify?

4 A. No, sir.

5 Q. Isn't your name on the bottom left-hand corner of that,
6 sir?

7 A. Yes.

8 Q. And that's an electronic signature, correct?

9 A. Yes.

09:55AM 10 Q. But you didn't read it before you signed it?

11 A. No, I don't remember -- I did read it, but I wasn't paying
12 attention like I am now. So I see my signature, yes, I know I
13 would have read it, but I wasn't paying attention to it at that
14 point to remember that I read it.

15 Q. Okay. So Agent Cedarleaf -- and this report was also
16 written by Agent Cedarleaf, correct?

17 A. Yes.

18 Q. And you said there was a period of time when you were the
19 acting supervisor, correct?

09:55AM 20 A. Yes, but I wasn't acting at that point.

21 Q. Okay. What led you to be the second signature on that
22 report, sir?

23 A. I have the ability -- I had the ability back then to sign
24 reports for agents when the boss was in meetings, the boss was
25 out. There's several agents who have that ability, so when the

1 in box got full, we'd go in and just try to sign them out for
2 the agents trying to get them into the file.

3 Q. Doesn't the second signature, isn't that supposed to
4 signify that someone has actually reviewed the report?

5 A. Right. As I said, I reviewed it, but I just read it to
6 make sure, okay, there's information in there and there's
7 nothing wrong. I wasn't the supervisor, so it wasn't my job to
8 delve down, as I do now as a supervisor, where I actually
9 scrutinize everything that I sign.

09:56AM 10 Q. Okay. So you just read it -- you read it, you signed it,
11 but you didn't really pay attention to what was going on?

12 A. Correct.

13 Q. Now, CW-1, Pelon, had a direct open line of communication
14 to MS-13 leadership in El Salvador, correct?

15 A. He earned that down the road, yes.

16 Q. Isn't it fair to say that as early as May of 2013, Pelon,
17 that is CW-1, was participating in a teleconference call from a
18 prison in El Salvador where the El Salvadorian leadership of
19 MS-13 is housed?

09:57AM 20 A. Again, I wasn't aware of that. I didn't start recording
21 conversations or having reports on conversations with
22 leadership of El Salvador until several months after I became a
23 case agent in 2015.

24 Q. So if I could ask you to look at the document that's on
25 the screen. That's a report dated May 29, 2013?

1 A. The report is dated May 29, 2013, yes.

2 Q. And it was written, if we turn over to the back side, by
3 Agent Freestone, did I get that, correct?

4 A. That may be a problem with the -- can you flip it over
5 again for me for a second?

6 Q. Is there a person named Blaine Freestone?

7 A. I don't know who Blaine Freestone is.

8 Q. The case agent's name is listed as Chad Blackwood,
9 correct?

09:58AM 10 A. That is correct.

11 Q. Do you know who he is?

12 A. I do know who he is.

13 Q. And there's a list of all persons present, including
14 yourself, do not include the CHS, correct?

15 A. That is correct.

16 Q. And in that space -- and this isn't -- we're looking at an
17 official FBI report. You'll give me that, correct?

18 A. Yes, that's -- oh, that's correct, yes.

19 Q. And it relates to this investigation, correct?

09:59AM 20 A. Correct.

21 Q. And there's a person named Blaine Freestone who apparently
22 wrote the report that you don't know who that person is, right?

23 A. That's correct. He's not assigned to the Boston Division.

24 Q. Man, woman, you don't know?

25 A. I have no idea.

1 Q. Okay. And is it fair to say that until you are seeing
2 this document here today, you did not know that CW-1 was
3 participating in conference calls with the leadership of
4 El Salvador's MS-13 from a prison in El Salvador as early as
5 2013?

6 A. That is correct.

7 Q. Now, El Salvador's leadership in -- MS-13's leadership,
8 pardon me, in El Salvador, many of them have been in prison,
9 correct?

10:00AM 10 A. I know that L. Diablito and his council are all in prison.

11 Q. And they're all in a single prison, right?

12 A. No, they're in different prisons.

13 Q. And is there one prison where many of them are?

14 A. They're spread out.

15 Q. All right. By 2015, you were directly involved in this
16 investigation, correct?

17 A. Yes, sir.

18 Q. And do you recall that on May 29, 2015, Pelon, that is
19 CW-1, engaged in a drug transaction with an individual named
10:00AM 20 Flaco?

21 A. I am aware that there were many drug buys in 2015. I
22 imagine there was one in May.

23 Q. Do you recall, sir, an occasion when, during a drug buy,
24 Flaco got a call from an individual named Bandito?

25 A. I believe I remember that drug buy, yes.

1 Q. Who's Bandito?

2 A. I believe he was a leader of MS-13 down in El Salvador.

3 Q. And let me ask you whether this is a report. Do you
4 recall what that conversation was between Bandito and Flaco
5 during that drug transaction on May 29, 2015?

6 A. If I remember correctly -- and, again, I'd have to review
7 my report or my partner's report, but I believe I was present
8 during that drug deal. We were doing a controlled purchase of
9 drugs from Flaco, and he was saying this is good, I'm going to
10:01AM 10 have you talking to leaders down in El Salvador because Flaco
11 was the leader of the East Boston clique.

12 Q. Let me show you, if I may, a document dated September 29,
13 2015. Do you see that, sir?

14 A. Yes.

15 Q. And that -- although it's dated September 29th, it refers
16 to an event on May 29, 2015, correct?

17 A. Correct.

18 Q. And this does concern a controlled purchase, a purchase of
19 drugs with an individual named Flaco by CW-1, correct?

10:02AM 20 A. Yes, sir.

21 Q. Who is Flaco again, by the way?

22 A. He's the leader of the East Boston Loco Salvatruchas
23 clique.

24 Q. Not ESLS?

25 A. No, that's EBLS.

1 Q. And is it fair to say, sir, that CW-1 briefed agents about
2 what Bandito had said during the call that he made to Flaco?

3 A. Yes.

4 Q. And later that was recorded, correct? That was recorded
5 at the time, I should say, correct?

6 A. Well, the conversation between Flaco and the CW were
7 recorded. I don't think we were able to record that phone call
8 because I don't think -- that was outside our presence, it was
9 during the drug buy, so if they didn't have a speaker, it would
10:03AM 10 be very hard for us to pick up that conversation.

11 Q. But you were briefed on that by CW-1, correct?

12 A. Yes.

13 Q. And what CW-1 told you was that the leader --

14 MR. POHL: Objection.

15 THE COURT: Let me see counsel at sidebar.

16 (THE FOLLOWING OCCURRED AT SIDEBAR:)

17 THE COURT: Why is it not hearsay, Mr. Murphy?

18 MR. MURPHY: There are two reasons, your Honor.

19 Number 1, it's not being offered for the truth. Number 2 --

10:04AM 20 THE COURT: What do you expect the answer to be, the
21 full question and answer?

22 MR. MURPHY: The full question is that -- and I will
23 say at the beginning of the questions that this agent -- which
24 he testified about on direct examination, that this agent
25 learned that there was a significant dispute between the

1 leaders of MS-13 in El Salvador and Mr. Sandoval. He learned
2 about that from Pelon, so we say, your Honor, it's admissible
3 for a number of different reasons.

4 First, the government was permitted over the defense
5 objection to provide this agent's summary of a number of steps
6 in the investigation, and he's already testified in very
7 summary fashion, and we would say somewhat misleading by this
8 dispute, that's Number 1.

9 So, Number 2 is that we say that to the extent that
10:05AM 10 these are statements from Pelon, which they all are, that they
11 are admissions of a party opponent, and that issue has been
12 briefed, as the Court has already said.

13 But I would say, your Honor, that, you know,
14 ultimately, the government, having chosen to put this witness
15 on as a summary witness, we are entitled to ask specific
16 questions about the fax data that he wrote that underlie the
17 summary.

18 THE COURT: I thought the dispute evidence came on
19 cross-examination. I don't think the government elicited that.
10:05AM 20 I thought that was elicited by Mr. Iovieno. I don't remember
21 he testifying, and Mr. Pohl, help me out. What is your -- what
22 did he testify on direct?

23 MR. POHL: Concerning?

24 THE COURT: Concerning the dispute.

25 MR. POHL: I mean, I think there was testimony that

1 agents were aware, through the recordings through Pelon, to the
2 extent that Pelon was the delivery device for the recordings,
3 that there was an ongoing dispute between MS-13 leaders in
4 El Salvador and the East Coast Program concerning whether that
5 clique was going to join, but -- and that frankly, that
6 information elicited and captured on recordings in several
7 different forms and dates was one of the reasons why the agents
8 had warned Mr. Sandoval.

9 THE COURT: Oh, that's right.

10:06AM 10 MR. POHL: But I think -- so I don't, A, agree that
11 Special Agent Wood testified as a summary witness. And, B,
12 everything that's going to come through that question would be
13 hearsay.

14 THE COURT: Well, I don't accept the confidential
15 witness as agent argument. I've looked at that, and I
16 just -- I find that troublesome, so put that aside.

17 It seems to me that evidence having come out on direct
18 is the background for warning the witness that there was this
19 dispute that I will permit some -- either partway down this
20 path in order to provide a complete picture. If you say, you
21 know, isn't it true that CW-1 told you that there was this
22 dispute and these were the contours of the dispute, that door
23 having been opened slightly, I think I'll let you get that out,
24 but it is otherwise I think hearsay, classic hearsay.

25 Again, I'm not saying it's irrelevant. CW-1 could so

1 testify, Sandoval could so testify, that's not the issue. The
2 witness is can we get it in through this witness, but I will
3 allow if we could go question by question to go down this path
4 to provide a complete picture of the dispute with headquarters
5 in El Salvador.

6 MR. POHL: Okay. Thank you.

7 (SIDEBAR CONFERENCE WAS CONCLUDED)

8 THE COURT: I think we have a juror who needs a break,
9 so we might as well take our break now.

10:08AM 10 THE CLERK: All rise.

11 (A recess was taken.)

12 THE CLERK: Thank you. You may be seated. Court is
13 now back in session.

14 THE COURT: I think what we'll do is we'll go until --
15 I don't know, 11:30, 11:40 somewhere in there and take our next
16 break.

17 Q. Special Agent Wood, we're talking about May, 29, 2015, the
18 time when you were working on this case, correct?

19 A. Yes.

20 Q. And that was the day that an individual named Bandito was
21 called into the middle of this drug transaction that you'd
22 arranged, correct?

23 A. Well, we directed, yes.

24 Q. And Bandito, you said, was a leader of MS-13 in
25 El Salvador, correct?

1 A. Yes.

2 Q. And he called CW-1, correct, on CW-1's phone?

3 A. Yes.

4 Q. And CW-1 had a conversation with Bandito that he reported
5 back to you about, correct?

6 A. Yes.

7 Q. And ultimately there was a recording of that call, which
8 you had a report about, right?

9 A. Well, if it worked properly, we had consensual T3 on so we
10:21AM 10 should have recorded that, and, yes, I do remember this day
11 very well, and I remember writing my report.

12 Q. So, Bandito told CW-1 that he and the other leaders in
13 El Salvador were concerned about Mr. Sandoval and Mr. Guzman,
14 correct?

15 A. That is correct, yes.

16 Q. And that they weren't following the rules established by
17 the East Coast Program, correct?

18 A. Yes, sir.

19 Q. And that he would not hesitate ordering Mr. Sandoval's
10:22AM 20 removal as the leader of the clique, correct?

21 A. Yes.

22 Q. And that there was discussions about promoting Muerto,
23 correct?

24 A. Yes.

25 Q. And CW-1, in that same conversation, when he was talking

1 back to the man in El Salvador said --

2 MR. POHL: Objection.

3 THE COURT: Is this something off the report now,
4 Mr. Murphy?

5 MR. MURPHY: It's something off the summary
6 transcript, your Honor.

7 THE COURT: I'm sorry. This is not a summary of a
8 recorded conversation, it's something different?

9 MR. MURPHY: This is a summary of the same recorded
10:22AM 10 conversation, your Honor.

11 THE COURT: All right. Overruled.

12 Q. And what CW-1 told the individual in El Salvador, the
13 leader, was that the leader could ask any clique about CW-1 and
14 the only ones on the street were him and Muerto, correct?

15 A. That's what it says, yes.

16 Q. Now, on May 31, 2015, CW-1, Pelon, told agents about a
17 conference call that he had with a number of MS leaders in
18 El Salvador, correct?

19 A. I believe so, but I'd have to see my report.

10:23AM 20 Q. So let me put a document on the document camera. Let me
21 show you a report. That's a report by Ben Wallace dated
22 May 31, 2015?

23 A. That doesn't say it's by Ben Wallace, he was the case
24 agent for --

25 Q. I apologize. The second page, the last page would tell us

1 who wrote the report, correct?

2 A. Yes, and that's me.

3 Q. And turning to the last page, it was you, correct?

4 A. Yes, sir.

5 Q. In this report, if we turn to page 2, talks about a
6 conference call between Pelon and a number of leaders in -- of
7 MS-13 in El Salvador, correct?

8 A. Yes.

9 Q. And that included Bandito, the man they were talking about
10:24AM 10 a moment ago, correct?

11 A. Yes.

12 Q. A person by the name of -- it's spelled here "Sugar," but
13 do you know how that's pronounced?

14 A. I believe we called it "Suga," we dropped the R.

15 Q. And who was he?

16 A. Another leader within the clique or within the East Coast
17 Program.

18 Q. And was he also situated down in El Salvador?

19 A. He was.

10:24AM 20 Q. And a person named Gorras, G-o-r-r-a-s. Who is that?

21 A. A leader in El Salvador.

22 Q. So CW-1 was directly in touch with those leaders in
23 El Salvador, correct?

24 A. Yes, I believe I testified earlier that in 2015, I was
25 aware of those communications with him and the CW and leaders

1 in El Salvador.

2 Q. And on those conference calls, what Pelon told you about
3 them was that the leaders in El Salvador expressed their
4 displeasure with Mr. Sandoval's leadership of the ESLS clique,
5 correct?

6 A. Yes.

7 Q. But they were upset about his failure to include the
8 clique in the East Coast Program?

9 A. Yes, that's correct.

10:25AM 10 Q. And that recently Mr. Sandoval had refused to even speak
11 with those individuals who were the leaders of the East Coast
12 Program in El Salvador, correct?

13 A. Yes.

14 Q. And they talked on those conference calls -- and this is
15 back in the end of May 2015, right?

16 A. Correct.

17 Q. They talked in those conference calls about punishing
18 Mr. Sandoval for disobeying their orders and replacing him as
19 leader of the clique, correct?

10:26AM 20 A. Yes.

21 Q. They stressed that the punishment would consist of a
22 beating, which could be administered by the leader of a MS
23 clique in Rhode Island, correct?

24 A. Yes, sir.

25 Q. And that was May 31, 2015?

1 A. Yes.

2 Q. Now, on July 14, 2015, so about six weeks later, Pelon,
3 that is CW-1, briefed agents about another call that he had
4 with Gorras, that's one of the big guys in El Salvador,
5 correct?

6 A. Yes.

7 Q. Suga and others, correct?

8 A. Yes.

9 Q. And during that call, do you recall that the leaders in
10:26AM 10 El Salvador instructed local clique members to elect two
11 members to ensure that the rules of the East Coast Program
12 would be followed?

13 A. I'd have to see my report, but I believe that was in
14 reference to two clique members, two clique leaders
15 representing all of the cliques operating in Massachusetts in
16 the East Coast Program.

17 Q. So let me show you a document dated July 18, 2015 and ask
18 you whether you recognize that document?

19 A. I do.

10:27AM 20 Q. And does that refer to a conference call among Gorras,
21 Sugar and others?

22 A. Yes.

23 Q. And this was a conference call, again, that CW-1
24 participated in, correct?

25 A. Yes.

1 Q. Mr. Sandoval was not part of this conference call,
2 correct?

3 A. That is correct.

4 Q. And what you learned after this call was that the leaders
5 in El Salvador wanted to set up a meeting to elect two members
6 who would ensure that the rules of the East Coast Program would
7 be followed, correct?

8 A. Yes.

9 Q. And that the two elected members would be in charge of all
10:28AM 10 of the Massachusetts MS cliques and tasked with enforcing the
11 rules of the East Coast Program, correct?

12 A. They would be the East Coast Program representatives over
13 the cliques here in Massachusetts.

14 Q. And CW-1 called Mr. Sandoval to tell him, right?

15 A. What's that?

16 Q. CW-1, after this call that he participated in from the big
17 guys in El Salvador, called Mr. Sandoval to tell him about it,
18 right?

19 A. Yes, it says that right there.

10:28AM 20 Q. Right. And eventually CW-1 did talk to Mr. Sandoval about
21 it, correct?

22 A. Yes.

23 Q. And what he told CW-1 when they eventually did talk was
24 that he was going to call a meeting to discuss the East Coast
25 Program --

1 MR. POHL: Objection.

2 THE COURT: Sustained.

3 Q. What did CW-1 tell you Mr. Sandoval said about the East
4 Coast Program?

5 MR. POHL: Objection.

6 THE COURT: Let me see you at sidebar.

7 (THE FOLLOWING OCCURRED AT SIDEBAR:)

8 THE COURT: All right. Now you're listening to your
9 own client's statements as opposed to these calls. The only
10:29AM 10 reason I'm allowing this at all was the idea was the government
11 had learned, you know, this information. That was the basis of
12 their warning to him, but his opinions as stated by him out of
13 court seem to me to be classic hearsay.

14 MR. MURPHY: Your Honor, I think, again, the
15 government was allowed to elicit summary testimony over our
16 objection.

17 THE COURT: I don't remember any summary testimony at
18 all, but go on.

19 MR. MURPHY: And the agent was allowed to give a
10:30AM 20 generalized description of this dispute and what the ESLS
21 clique's position was. First they said they didn't want to
22 join now, then they said they did, then they said they didn't,
23 so all of that stuff has been the subject of testimony already
24 as part, and I think, frankly, your Honor, the record will
25 reflect that you said this was permissible summary testimony.

1 And so we need to be able to, having the door been
2 opened, we need to be able to put in the details.

3 THE COURT: Why can't you do that without your own
4 client's statements as to what his beliefs and intentions and
5 opinions are, as opposed to the threat against him, which is
6 just what the door was opened. Again, you can call your
7 client, obviously.

8 MR. MURPHY: I understand, your Honor.

9 THE COURT: Or you call someone else who, you know,
10:31AM 10 who has something that falls within the hearsay exception, but
11 it seems to me, you know, here you're just eliciting your own
12 client's statements that are, you know, that perhaps the whole
13 thing is problematic from a hearsay standpoint, but this is
14 another layer beyond that where you just, you know, the
15 government can't cross-examine your client about these
16 statements, and I don't think it's necessary for completeness
17 under the circumstances, so I can also take it a question at a
18 time, but this is just him stating his intentions or supposedly
19 his opinions, and you are eliciting your own client's
10:32AM 20 statements, so I'm going to sustain the objection.

21 MR. MURPHY: Thank you.

22 MR. POHL: Thank you.

23 (SIDEBAR CONFERENCE WAS CONCLUDED)

24 THE COURT: All right. Let's put another question to
25 the witness.

1 Q. You testified on questions Friday, I believe, that -- let
2 me ask you a different question. Do you recall that on
3 July 29, 2015, Mr. -- CW-1, Pelon, gave your team another
4 briefing?

5 A. I'd have to see the report. There was a lot of -- okay.

6 Q. And he reported about a meeting of the folks at that
7 Norman Street Garage, correct?

8 A. Yes.

9 Q. And the subject of the meeting was that -- the dispute
10:33AM 10 between Mr. Sandoval and the leaders of MS-13 in El Salvador,

11 correct?

12 A. Can you turn the page so I can continue reading, please?

13 Q. Absolutely, sir.

14 A. Okay. I did review this, yes, but I did not write this
15 report.

16 Q. Fair enough, sir. Is it fair to say that you learned that
17 the upshot of this meeting was that, at least for a time, the
18 members of ESLS decided to -- that they would tell the leaders
19 in El Salvador that they would be part of the ESLS -- they
20 would be part of the East Coast Program, but they didn't want
21 them to have control of the clique?

22 A. Yes.

23 Q. And when you testified Friday about there was a time when
24 they did join the East Coast Program, it was this that you
25 referred to, correct?

1 A. I was not referring to this one, no.

2 Q. Now, is it fair to say, sir, that on August 15th, Pelon
3 conducted another controlled purchase of drugs from that
4 individual named Flaco?

5 A. I would have to see the report, but we purchased a lot so
6 I would say that we were purchasing drugs throughout the entire
7 year, so Herzzon, we did purchase drugs from him in August.

8 Q. And if I show you a report dated August 6, 2015, does this
9 concern a drug purchase on August 15th between Pelon and this
10:35AM 10 individual Flaco?

11 A. It appears so. Yes, it does. Yes.

12 Q. Flaco reported to Pelon about --

13 THE COURT: I'm sorry, this says August 5th. I think
14 you said August 15th earlier, Mr. Murphy.

15 MR. MURPHY: I'm sorry. I meant to say August 5th,
16 your Honor.

17 THE COURT: Go ahead.

18 Q. So we're on August 5th, correct?

19 A. It was August 5th, yes.

10:35AM 20 Q. And Pelon, CW-1, told you what he had heard from Flaco
21 about what was happening in this dispute between the leaders in
22 El Salvador and Mr. Sandoval, correct?

23 A. Yes.

24 Q. And what he told you was that El Salvador --

25 MR. POHL: Objection.

1 THE COURT: Overruled.

2 Q. -- was now sending someone to discipline Casper and that's
3 Mr. Sandoval, right?

4 A. I believe Special Agent Wallace was debriefing on this
5 one, so reading this report, that's what it says.

6 Q. Now, you don't doubt that the report was accurate,
7 correct?

8 A. No, I believe the report is accurate.

9 Q. Okay. So we're not quibbling about whether that
10:36AM 10 report --

11 A. No, no. I just want to make sure that --

12 Q. It's not your report?

13 A. It's not my report, yes, sir.

14 Q. Fair enough. So what Flaco told CW-1 was that El Salvador
15 was now sending someone to discipline Casper for not accepting
16 the East Coast Program rules and he also said that that
17 information came from a person named Donkey, correct?

18 A. Yes.

19 Q. Who is Donkey?

10:37AM 20 A. He's a leader of MS-13.

21 Q. In El Salvador?

22 A. Yes, sir.

23 Q. Okay. Now, between August 15th and September 3, 2015,
24 things began to continue to escalate concerning this threat to
25 Mr. Sandoval, correct?

1 A. According to this, this is August 5th. You said August
2 15th again.

3 Q. I did, I apologize. So between August 5th and
4 September 3rd, this dispute continued to escalate, correct?

5 A. I believe it did.

6 Q. And it was on September 3, 2015 that you and several other
7 officers went to warn Mr. Sandoval that his life was in danger,
8 correct?

9 A. Yes.

10:37AM 10 Q. And that was according to FBI policy, correct?

11 A. I don't know if it's policy, it's just the thing to do,
12 the right thing to do. If we get information that someone's
13 life is in danger, we warn them.

14 Q. And even after that warning, you picked up information
15 that this dispute continued, correct?

16 A. I believe so.

17 Q. And you intercepted conversations in which Mr. Sandoval
18 told the leaders in El Salvador directly that he was not going
19 to be participating in the East Coast Program, correct?

10:38AM 20 A. I don't know. I'd have to see reports on intercepted
21 conversations between Mr. Sandoval and the East Coast leaders.
22 I didn't have a Title III on his phone.

23 THE COURT: Ladies and gentlemen, let me explain what
24 a Title III is. That's the reference to the section of the law
25 that permits the government, under some circumstances, to

1 intercept telephone calls, which requires a showing of probable
2 cause and a court warrant, and it's called T3 or Title III.

3 It's just kind of law enforcement jargon. Go ahead.

4 Q. So let me show you a transcript summary that was completed
5 on September 23, 2015. Do you see that, sir?

6 A. I do.

7 Q. And it shows that the date and time of the recording was
8 September 15th -- September 5, September 5, 2015, pardon me?

9 A. Yes, September 5, 2015 at 7:49 p.m.

10:39AM 10 Q. And this describes a conversation that was -- that
11 occurred between Pelon, whose phones you were recording,
12 correct, CW-1, and others, correct?

13 A. Yes.

14 Q. And at that point CW-1 was giving instructions to
15 Mr. Sandoval --

16 MR. POHL: Objection.

17 Q. -- about how to deal with these folks in El Salvador --

18 MR. POHL: Objection.

19 Q. -- that he had a direct line to, correct?

10:40AM 20 THE COURT: Sustained.

21 Q. Was CW-1 providing advice --

22 MR. POHL: Objection.

23 Q. -- to Mr. Sandoval?

24 THE COURT: I'll allow that. Overruled.

25 A. All homeboys can give advice to the leaders of the gang,

1 so, yes. CW-1 offered advice.

2 Q. And what CW-1 advised Mr. Sandoval is to tell the leaders
3 in El Salvador --

4 MR. POHL: Objection.

5 THE COURT: I'm sorry. Let me see counsel.

6 (THE FOLLOWING OCCURRED AT SIDEBAR:)

7 THE COURT: What's your objection to this piece of it
8 as opposed to, you know, how we've gotten to this point? In
9 other words, what's different about this?

10:41AM 10 MR. POHL: Well, I think to the extent that it was
11 allowed before, it was as a generalized way of completing -- I
12 don't think it was an incomplete picture on direct or after
13 Mr. Iovieno's cross, but to the extent that this was let out, I
14 think we've sort of reached the end point of that.

15 We have, you know, the cooperating witness's
16 conversation is with Casper, so whatever is coming next is
17 going to be classic hearsay either through CW-1 or an attempt
18 to elicit what Mr. Sandoval said in return and for the reasons
19 we've set before, I don't think that's...

10:42AM 20 THE COURT: This is advice to Casper, okay, for
21 whatever that's worth, CW-1 tells him that, Casper with the
22 meetings --

23 MR. MURPHY: I would be turning to the next page, your
24 Honor.

25 THE COURT: Well --

1 MR. MURPHY: Your Honor.

2 THE COURT: Yes.

3 MR. MURPHY: I would say that in addition to the
4 arguments that I made before that this is not hearsay because I
5 said before that it was not offered for the truth. That's
6 because it's offered to show Mr. Sandoval's state of mind. It
7 falls within the state of mind exception to the hearsay rule,
8 your Honor.

9 THE COURT: Okay. Casper's own statements are -- all
10:43AM 10 right. Obviously CW-1's statements are hearsay, but the
11 hearsay within hearsay, you're saying it's Casper's state of
12 mind?

13 MR. MURPHY: CW-1's statements are also state of mind.

14 THE COURT: And just to be -- well, yes, I'm sorry,
15 Ms. Lawrence.

16 MS. LAWRENCE: No. I think, you know, to the extent
17 the state of mind exception would apply, it would only have to
18 apply to something that's overlooking gravity at this moment
19 and not to prove the fact of the dispute.

10:44AM 20 THE COURT: But it can be his future intention, it
21 could be his state of mind. All right. One of the reasons I'm
22 having trouble with this is I'm having also trouble seeing just
23 how this hurts the government and so -- well, let's do this. I
24 haven't gotten down -- this far down the path. I'm going to
25 allow it here, and I'll allow you to elicit your client's

1 statements to the extent that it is his current state of mind
2 or his future intentions.

3 MR. MURPHY: Your Honor, with respect to the
4 beginning, the prelude?

5 THE COURT: The prelude, I'll permit that.

6 (SIDEBAR CONFERENCE WAS CONCLUDED)

7 THE COURT: Go ahead, Mr. Murphy.

8 Q. So, on the first paragraph, the highlighted paragraph,
9 sir, that tells us the advice that CW-1 gave to Mr. Sandoval
10:45AM 10 about what he should tell the leaders of MS-13 down in
11 El Salvador, correct?

12 A. Yes.

13 Q. And CW-1 advised Mr. Sandoval that Mr. Sandoval needs to
14 calmly tell Gorras -- he was one of the leaders, right?

15 A. Yes.

16 Q. That they, as a clique, have all decided that continuing
17 to be part of Gorras' program is not convenient for them
18 because they cannot be responsible for all the things that take
19 place down there and cannot deal with their consequences,
10:46AM 20 correct? That's what he said?

21 A. That's a summary. It's not verbatim, so, you know, as a
22 summary, I would say that's what he's advising, but the
23 specifics, we don't have a specific exact word for word
24 verbatim translation here.

25 Q. Fair enough, sir, but this is a summary prepared by one of

1 those linguists that you were talking about with Mr. Norkunas,
2 right?

3 A. That is correct.

4 Q. She's flown in?

5 A. Actually, she's assigned to the Boston office, if you look
6 at the front page.

7 Q. But she's here the whole time, correct?

8 A. Yes, sir.

9 Q. So it's an FBI linguist summary of a tape recording that
10:46AM 10 the FBI made?

11 A. That is correct, sir.

12 Q. And as part of this advice, CW-1 told Mr. Sandoval to say,
13 to tell them, for them down there, it's easy to kill and it's
14 easy to collect but not here, correct?

15 A. Yes, that is correct.

16 Q. And, in fact, Mr. Sandoval did have a conversation with
17 these individuals in El Salvador, correct?

18 A. Further down it looks like there is a conversation.

19 Q. And these are the ones who you believe had threatened to
10:47AM 20 kill him, correct?

21 A. Well, when it says they talked to Chuba, I'm not sure
22 there, but, yes.

23 Q. And in that conversation, Mr. Sandoval told an individual
24 named Suga -- do you know whether that's Suga or whether that's
25 simply a mistranslation?

1 A. It could very well be, yes.

2 Q. You don't know a person name Chuga, C-h-u-g-a, in
3 El Salvador's leadership?

4 A. Is it C-h-u-b-a?

5 Q. It's C-h-u-g-a in this, or b-a in this one.

6 A. I think it's b-a from what I'm reading -- oh. And then
7 there's another one where it says C-h-u-g-a. I would believe
8 that's Suga.

9 Q. Okay. So that's one of the leaders in El Salvador?

10:48AM 10 A. Correct.

11 Q. And Mr. Sandoval tells Suga that his clique is not going
12 to continue with the Program or being part of it at all,
13 correct?

14 A. Yes.

15 Q. That his clique cannot find common ground with the
16 Program?

17 A. That is correct.

18 Q. And that they're not going to continue to be part of the
19 Program and there's nothing that says they have to, correct?

10:48AM 20 A. That's correct.

21 Q. And Suga told Mr. Sandoval that the barrio is the one who
22 will be making decisions for ESLS and not Casper and his
23 members, correct?

24 A. He does say that, yes.

25 Q. And what's the barrio?

1 A. That's MS-13.

2 Q. Now, you testified about a beating that took place in
3 December, 2015. Do you recall that, sir?

4 A. Was it December or January?

5 Q. Let me ask you. This was a meeting that took place in
6 Virginia, sir. Do you recall testifying about that?

7 A. Oh, the East Coast Program leader meeting?

8 Q. Yes.

9 A. Yes.

10:49AM 10 Q. So, I will try to shortcut this. What happened is that an
11 individual named Demente, correct, another clique leader?

12 A. Yes.

13 Q. Not part of ESLS?

14 A. No, he's not with ESLS.

15 Q. Was asked to give -- asked CW-1 to give him a ride down to
16 this meeting in the Maryland-Virginia area, correct?

17 A. Yes.

18 Q. And they went to Maryland first, correct?

19 A. Yes.

10:50AM 20 Q. To a couple different locations there, correct?

21 A. Yes.

22 Q. And they ended up in Richmond, Virginia, correct?

23 A. They did.

24 Q. And that was a meeting that was led by an individual named
25 Chucky, correct?

1 A. Chucky.

2 Q. Chucky?

3 A. Correct.

4 Q. And Chucky was the leader of the East Coast Program,
5 correct?

6 A. In the United States, yes.

7 Q. And before Chucky permitted CW-1 to come into the meeting,
8 he had to make a call to El Salvador to make sure that someone
9 in El Salvador would vouch for Pelon, correct, for CW-1?

10:50AM 10 A. I believe that is correct.

11 Q. And during -- it was a long meeting, correct?

12 A. Yes, it was.

13 Q. And during that meeting, there was a discussion that
14 specifically focused on Mr. Sandoval; isn't that correct?

15 A. Yes, I believe so.

16 Q. And there is a transcript of that meeting, correct?

17 A. Yes, sir.

18 Q. And showing you a document on the screen, do you recognize
19 that as a transcript of that meeting?

10:51AM 20 A. Yes. Is it an excerpt? It's an excerpt of the
21 transcript, though.

22 Q. Again, prepared by the government, correct?

23 A. Yes, sir.

24 MR. MURPHY: Your Honor, with the Court's permission,
25 I'd like to mark this now for identification.

1 THE COURT: For identification? All right. What's
2 the number?

3 THE CLERK: Judge, the next number would be 225.

4 THE COURT: 225. 225 for identification.

5 (Exhibit 225 was marked for identification.)

6 Q. And that contains several passages that relate directly to
7 Mr. Sandoval, correct?

8 A. I believe it does, yes.

9 Q. And if we turn to page 11.

10:52AM 10 A. Yes.

11 Q. Does that part of the transcript --

12 THE COURT: Hold on. Are we showing this to the jury?

13 THE CLERK: No.

14 THE COURT: This is not in evidence.

15 MR. MURPHY: It shouldn't be.

16 THE COURT: Did you take it -- okay. Go ahead.

17 Q. Does that part of the document -- it says verbatim at
18 10:03:07, does that relate at page 11 moving onto page 12 to a
19 conversation about Mr. Sandoval?

10:52AM 20 A. Well, I know they were talking about Mr. Sandoval, yes.

21 Q. And if we turn to page 29, does that show additional
22 conversation about Mr. Sandoval?

23 A. It doesn't start off, it just says -- the question is
24 asked "What's happening?" And they ask the CW-1 what's
25 happening, so you'd have to go forward where they start talking

1 about your client, sir.

2 Q. But on the next page, on page 30, they do, correct?

3 A. Yes.

4 MR. MURPHY: If I may approach, your Honor?

5 THE COURT: Yes.

6 Q. Let me show you a three-page document, Special Agent Wood,
7 and ask you whether that's an excerpt of a longer excerpt that
8 we've been looking at that was marked as an exhibit for
9 identification that contains those passages that we just looked
10:53AM 10 at on the document marked for identification relating to the
11 discussion of Mr. Sandoval?

12 A. Yes, it appears to be exactly that.

13 MR. MURPHY: May we offer this as an exhibit?

14 MR. POHL: Objection.

15 THE COURT: Can I see it? All right. I'll admit it.

16 226.

17 (Exhibit No. 226 received into evidence.)

18 MR. MURPHY: May I approach, your Honor?

19 THE COURT: Yes.

10:55AM 20 MR. MURPHY: I'm going to put it up on the document
21 camera.

22 Q. So when you were reading transcripts with Mr. Pohl, you
23 were taking the position of CW-1; is that correct?

24 A. Yes, sir.

25 Q. So why don't we do the same, and if we could read this

1 transcript together.

2 MR. MURPHY: The jury does not have this, your Honor,
3 but I would propose to, now that it's been admitted, to submit
4 it to be part of the jury's evidence binder.

5 THE COURT: Well, I don't know how we're going to do
6 that, but can they see it now?

7 MR. MURPHY: Yes.

8 THE COURT: All right. We'll talk about that later.
9 Go ahead.

10:56AM 10 Q. So at 1:03:07, Chucky, he's the leader of the East Coast
11 Program in the United States, correct?

12 A. Yes, sir.

13 Q. He says, "How many cliques are there organized in the
14 sector which work together? Some? Is there Mara there?"

15 And then Demente -- who's Demente?

16 A. Demente is the leader of the Molinos.

17 Q. It's another Boston area clique?

18 A. It's the United States clique.

19 Q. Okay. Not ESLS, correct?

10:56AM 20 A. That's correct.

21 Q. Demente says, "No, because how many times have they had
22 you pay?"

23 Chucky: "Nothing, no one from that sector."

24 Demente: "Well, me, we were looking, I made them see
25 before, well, yes, but there --"

1 Chucky: "And how is it there with your clique?"

2 A. CW-1: "No, man, the main leader was pushing us down. You
3 know, what I mean? He was like --- I'm being honest."

4 Q. Chucky: "The old guy?"

5 A. CW-1: "Yeah, man."

6 Q. Chucky: "Who was this guy?"

7 A. CW-1: "Casper."

8 Q. Chucky: "And why don't you kill him? Why don't you get
9 together?"

10:57AM 10 A. CW-1: "Well, that is the plan we have right now since
11 we're like only about 30, but we are all older. We are
12 planning, like some seven homeboys who are the ones who
13 coordinate."

14 Q. Chucky: "You are all older."

15 A. CW-1: "Yes."

16 Q. Chucky: "So why haven't you?" Chucky: "Why don't you
17 all get together, the ones who are willing to meet this
18 challenge, because that guy is making your clique look bad, you
19 can?"

10:57AM 20 A. CW-1: "Yes, that's what we are talking about. That's why
21 I am here, man, to face things. You know what I mean? To see
22 what (unintelligible.) Because the thing is that the guy, he
23 is saying he is here, but he doesn't run with anyone, you know?
24 That's it. He will be independent. So what happens then?
25 That we --"

1 Q. Demente: "That's why I say we have to bring this guy so
2 he can face things." Chucky: "Okay, if you are willing to
3 represent your clique and see what's up or to organize with
4 homeboys who want to and tell them, look, homeboy, that's
5 really not good."

6 Demente: "But Mamia."

7 Now, who's Mamia?

8 A. A leader from a different clique in the East Coast
9 Program.

10:58AM 10 Q. "Take him out."

11 Chucky: "You, yourself, can come."

12 Demente: "But this is very dangerous for these
13 homeboys."

14 Now, later in the meeting in the transcript that was
15 marked for identification, there's another discussion about
16 Mr. Sandoval, correct?

17 A. Yes, sir.

18 Q. And that's summarized here, that's excerpted here, I
19 should say?

10:58AM 20 A. Yes.

21 Q. And if we could read the parts as before. Suga, he's the
22 person we were talking about before, correct?

23 A. Yes.

24 Q. The leader in El Salvador?

25 A. Correct.

1 Q. They got him on the phone?

2 A. Yes.

3 Q. "We're going to do something, but right now I want to talk
4 to these dudes in the Eastside Program. What's happening,
5 Pelon?"

6 A. CW-1: "Not much, doggie."

7 Q. Suga: "When you go back to your homeboys."

8 A. CW-1: "That's right. I'm going there."

9 Q. Suga: "I want you to meet with your people, brother so
10:59AM 10 that they don't come here, you know the reality of your clique,
11 brother, because your clique doesn't, you know, and I don't
12 know why the homeboys?"

13 Q. CW-1: "Suga, you know the whole thing with Casper. This
14 is (redacted.) What was I told? (Unintelligible.) Me and
15 Muerto, but we had to (unintelligible.) So now we are
16 planning, me, Muerto and Caballo, we're seniors and we're going
17 to be Eastside, but we're going to be like two groups, because
18 we're going to, they never support us here. You know how those
19 dudes are."

10:59AM 20 Q. Now, in that transcript that we just saw, CW-1 said he was
21 going to kill Mr. Sandoval, correct?

22 A. He never said that he was going to kill your client, sir.
23 I think he says that's what we're planning.

24 Q. Oh, that's what we're talking about?

25 A. Yes.

1 Q. Okay. So CW-1 was talking about killing Mr. Sandoval?

2 A. In this report, yes, or in this transcript.

3 Q. Now, let me turn to a number of different subjects.

4 Number 1, you testified a few moments ago about these
5 protection details, correct?

6 A. Yes.

7 Q. And you said the protection details offered people who
8 were -- offered people the opportunity to volunteer to
9 participate in a drug transaction, correct?

11:00AM 10 A. Yes.

11 Q. Pelon gave that opportunity to volunteer to Mr. Sandoval,
12 correct?

13 A. He did.

14 Q. Mr. Sandoval said no, correct?

15 A. I believe that is correct.

16 Q. Now, it's true, isn't it, that sometimes cliques commit
17 crimes as a group for the benefit of the group, correct?

18 A. Yes, sometimes cliques do commit crimes that benefit the
19 whole group.

11:01AM 20 Q. So, for example, the Everett clique, you learned in the
21 course of this investigation, has some of its members with
22 selling marijuana, which was a group clique project, correct?

23 A. Yes.

24 Q. And the money from that clique, the money that were
25 received from selling marijuana became clique money, correct?

1 A. Yes.

2 Q. Okay. But you learned in the course of your investigation
3 that sometimes clique members or associates freelanced,
4 correct?

5 A. I'm not sure. Do you mean that -- can you rephrase that
6 because I'm not quite sure what you mean by the freelancing
7 aspect.

8 Q. Sure. So, sometimes people who were members of cliques or
9 were associated with cliques would commit crimes on their own
11:02AM 10 without the knowledge or permission of the clique's leaders,
11 correct?

12 A. Cliques would commit -- clique members could commit
13 crimes, but the clique would find out about it. They may not
14 know beforehand, but they discussed crimes that would occur
15 depending on the type of crime.

16 Q. Okay. Well, let me give you a specific example, sir. Did
17 you learn in the course of your investigation that there was an
18 individual named Clacker, correct, right, who was associated
19 with the Enfermos clique in Boston?

11:02AM 20 A. Yes.

21 Q. And did you learn that in the winter of 2014 and '15
22 Clacker and others committed between 30 and 40 armed robberies
23 of gypsy cab drivers, stealing money and cell phones and
24 sharing money with their accomplices, but they did that without
25 the knowledge of the clique itself?

1 A. I would disagree with how you're phrasing that. I don't
2 know if that number is completely accurate, and I would also
3 say at the point that those robberies were occurring -- at that
4 point, most of the Enfermos were already arrested, Clacker were
5 not, so it would be very hard for Clacker to tell his clique
6 what he had been doing in 2014.

7 Q. Well, let's see if we can break that down. Clacker was
8 affiliated with the Enfermos clique, correct?

9 A. Yes, sir.

11:03AM 10 Q. And the leader of the Clacker's clique was in jail,
11 correct?

12 A. Yes, sir.

13 Q. But somebody else was designated as the leader when he was
14 not, correct?

15 A. Yes. Well, no, Tremendo was still the leader, but there
16 was also another leader.

17 Q. An acting leader?

18 A. Yes, that be would fine to say.

19 Q. And it was Clacker who told you about these 30 or 40 armed
11:04AM 20 robberies of gypsy cab drivers that he committed with others,
21 correct?

22 A. Yes, he told us that he was committing robberies, but the
23 questions were asked where he said, "How many did you do?" And
24 he said, "I did several."

25 "Well, how many?" "I don't know."

1 "Would it be fair to say 7?" "Yes."

2 "Would it be fair to say 10?" "Yes."

3 "Would it be fair to says 15?" "Yes."

4 So he didn't really know, and he just agreed to make
5 it say 30, 40, but I would believe that it was actually less
6 than that.

7 Q. Clacker testified in the grand jury that it was between 30
8 and 40, correct?

9 A. I didn't read his testimony, so I don't know what he
11:04AM 10 actually testified. When we asked him what he had done, he
11 agreed to that number. Again, as I said, I think he
12 overestimated. I don't believe it, but that's what we put on
13 the record, 30 to 40.

14 Q. So I'm going to try to see if I understand that. Clacker
15 told you about these armed robberies of gypsy cab drivers that
16 he and others had committed, correct?

17 A. Yes, sir.

18 Q. You put on the record, as you say, that it was between 30
19 and 40, correct?

11:05AM 20 A. Yes, because he didn't fully remember, and he just kept
21 agreeing to the number that was asked him, so we said, okay,
22 that's what he thinks, we're going to go with that. As I said,
23 personally, I think it's lower than that, but that's what we
24 had him finally say, yes, I think it's 30 to 40, so we're going
25 to go with 30 to 40.

1 Q. You weren't there, correct?

2 A. No.

3 Q. Clacker was?

4 A. At the robberies?

5 Q. Yes.

6 A. Yes.

7 Q. And is it your experience, sir, that people who are
8 talking to the FBI typically inflate the number of crimes they
9 committed rather than minimize them?

11:05AM 10 A. I have found some people are very truthful and admit to
11 everything. I found some people try and bolster who they are.
12 I find that people also limit or try and hide what they've
13 done, so I've seen it range from underestimating to
14 overestimating.

15 Q. And I take it you don't know what Chucky testified in the
16 grand jury about whether any clique members knew what he was
17 doing?

18 A. I don't know, no.

19 Q. Because you've never read his grand jury under oath,
20 correct?

21 A. I have not, no.

22 Q. Were there any reports that were written about this
23 interview of Chucky where -- I'm sorry, of Clacker, where he
24 said might have been 5, might have been 10, might have been 7,
25 might have been 30, might have been 40?

1 A. I know -- I believe a report was written. I didn't read
2 that report. I can remember I was driving home from Virginia
3 from that meeting when I was called and said this is what we
4 just found out from Clacker, and I remember that's how I was
5 told the conversation went with trying to figure out how many
6 he had committed.

7 Q. And who was that call from, sir?

8 A. That was either from Special Agent Wallace or
9 Sergeant Millett.

11:07AM 10 Q. And do you know of your own personal knowledge whether
11 either of them ever wrote a report about this meeting you're
12 describing?

13 A. I believe Special Agent Wallace would have written a
14 report.

15 Q. But you have not read it?

16 A. If the report was generated, no, I've not read it.

17 Q. And did you ever talk to Clacker personally about whether
18 it was 5 or 10 or 15 or 20 or 30 or 40?

19 A. I have not spoken directly to him, no, sir.

11:07AM 20 Q. Now, when CW-1 was out there working for the FBI, the FBI
21 recorded the calls on one of his phones, correct?

22 A. Yes.

23 Q. But he had two phones, correct?

24 A. Yes, sir.

25 Q. Why was he given two phones?

1 A. We didn't give him two phones. He had his phone and then
2 we had his other phone.

3 Q. Okay. You didn't record the calls on the second phone,
4 correct?

5 A. Yes, that's correct.

6 Q. You had something called a pen register on that, correct?

7 A. I believe we had a pen register on both phones, but I'd
8 have to go back to review and see if we had pen registers on
9 both phones or just the one.

11:08AM 10 Q. And a pen register, if you did have it on the second
11 phone, that does not allow you to record the contents of any
12 conversations between someone who calls CW-1 and CW-1, correct?

13 A. That is correct, yes.

14 Q. It tells you the numbers that are called in and the
15 numbers that he calls out, correct?

16 A. It breaks it down by the date, the time, you know, on this
17 date, this time this phone call was either made or incoming,
18 yes.

19 Q. But it looks more or less, not exactly, but more or less
11:09AM 20 like a detailed cell phone bill like we used to get in the old
21 days, right, with all the numbers that we called?

22 A. Yes.

23 Q. And unless you looked and checked to see who CW-1 was
24 talking with on his second line, you wouldn't know who he was
25 talking to, correct?

1 A. Yes, that's absolutely correct.

2 Q. And do you recall ever doing that during the course of the
3 investigation?

4 A. No, I wasn't checking the phone logs, other people were.

5 Q. Now, the in-person meetings that CW-1 recorded, he had to
6 tell you about those, correct?

7 A. Yes.

8 Q. So he would be the one who would alert you to a meeting
9 that he thought should be recorded, correct?

11:09AM 10 A. No, he would alert us to -- on having a meeting or having
11 been called to a meeting or I'm going to meet so and so, and at
12 that point we'd say, okay, let's get this recorded.

13 Q. But you were relying on him to tell you when there were
14 meetings, correct?

15 A. Yes.

16 Q. And if he didn't tell you about a meeting, you'd never
17 know about it?

18 A. Odds are that would be absolutely correct, yes.

19 Q. Now, the conversations that we've seen that were tape
11:10AM 20 recorded in his car, he had the authority -- he had the ability
21 to turn that recorder on and off, correct?

22 A. Yes.

23 Q. You had a kill switch that could turn that car off
24 remotely, correct?

25 A. That was only during the protection details. We didn't

1 kill switch his case, just the car that was used for the
2 protection details.

3 Q. Fair enough, sir. But he had control over the tape
4 recording equipment in his car, correct?

5 A. At the end of the investigation, yes. In the initial, no.
6 We turned it on and off and then due to the amount of times he
7 was meeting people, we showed him how to work it so he could
8 turn it on.

9 Q. But you didn't turn it on and off remotely, correct?

11:11AM 10 A. You can't turn it off and on remotely, no, sir.

11 Q. So even earlier in the investigation when it required the
12 FBI to turn it on, he had to bring the car to a designated
13 location and you turned it on then, correct?

14 A. We would install the recorder for those meetings because
15 yes, as I told you, when the procedures we talked about last
16 week, that be would part of the procedure.

17 Q. So Mr. -- CW-1, it's fair to say, had lots of
18 conversations with lots of people in and out of the car that
19 the FBI did not record, correct?

11:11AM 20 A. Oh, absolutely, yes.

21 Q. And it was essentially his decision about what the FBI
22 would record and not?

23 A. No, it was not his decision like that, the way you phrased
24 it, no, sir.

25 Q. But if he didn't tell you about a meeting or a -- if he

1 didn't tell you about a meeting, you wouldn't know to record
2 it?

3 A. Yes, that's correct.

4 Q. Now, as part of your investigation in this matter, did you
5 look into a stabbing that took place on May 12, 2015 near
6 Highland Park in Chelsea?

7 A. Yes.

8 Q. Tell us what you did to investigate that stabbing, sir.

9 A. We interviewed the CW.

11:12AM 10 Q. Did you do anything else, sir?

11 A. I believe we got the reports from the stabbing.

12 Q. Was a person named Miner Ochre the victim of that
13 stabbing?

14 A. I can't remember the victim of the stabbing at this point.
15 I'd have to see the reports to see.

16 Q. What did you learn in the course of your investigation
17 about the circumstances of that stabbing, sir?

18 A. If I remember correctly, an MS member had seen 18th
19 Street, he called for backup, people came in, one of the MS
11:13AM 20 members stabbed the kid, and then they all fled the area.

21 Q. So who was the MS member that first saw the 18th Street
22 people, as you understand it in your investigation?

23 MR. POHL: Objection.

24 THE COURT: I don't know how he could testify about
25 this. Well, sustained.

1 Q. Do you know, sir?

2 MR. POHL: Objection.

3 THE COURT: Sustained.

4 Q. Now, you testified on direct examination about the
5 Trenton Street homicide of Irvin De Paz that was committed by
6 the individual you've identified as Animal, correct?

7 A. Yes, sir.

8 Q. At the time of Mr. De Paz's stabbing, Animal was not then
9 associated with ESLS, correct?

11:13AM 10 A. That is correct.

11 Q. But he did know CW-1, correct?

12 A. I don't know when he first met him, but, yes, he at some
13 point did become familiar with CW-1.

14 MR. MURPHY: If I could ask for Exhibit 103, the
15 transcript.

16 THE COURT: I'm sorry, is this in evidence?

17 MR. POHL: It is in evidence, your Honor.

18 THE COURT: Okay. Go ahead.

19 Q. So this is the conversation that we saw on tape earlier,
11:14AM 20 correct?

21 A. Yes, sir.

22 Q. And it's between Animal and CW-1, correct?

23 A. Yes, but I believe there were at least or two other people
24 in the back of the, car and I don't believe they were speaking
25 during this portion -- well, no, one did. David spoke, but

1 yes.

2 Q. So none of these defendants were in the back of the car?

3 A. That is absolutely correct, sir.

4 Q. And CW-1 says about two-thirds of the way down the page,
5 "And, hey, you just didn't take down anyone," correct?

6 A. That is correct.

7 Q. And Animal says, "No, a major culero," correct?

8 A. Correct.

9 Q. And what does CW-1 say next?

11:15AM 10 A. "A major culero, I had already smashed his head, dude,"
11 didn't they tell you how -- or, "didn't they tell you?"

12 Q. And that's Pelon CW-1 saying that he had already smashed
13 Mr. De Paz's head, correct?

14 A. Yes.

15 Q. And if we turn to page 2, I think the fifth line, The
16 fifth entry down, Animal says, "He could never stop me, the
17 culero, and whenever he would see me, he would immediately
18 run."

19 And then CW-1 says, could you read that, please?

11:16AM 20 A. "Scooby and I asked Snoopy. I gave him a fucking beating
21 with Snoopy."

22 Q. And does he later say that he hit him with a bat in this
23 conversation?

24 A. Yes.

25 Q. And that was CW-1 talking, correct?

1 A. Yes, sir.

2 Q. And those were not activities that were authorized by the
3 FBI, correct?

4 A. I don't believe those activities took place. I think he's
5 using the cover right now to make himself look good in front of
6 Animal.

7 Q. And how do you know that, sir?

8 A. Because I would've believe we would have found a report
9 saying that people hit this kid with a baseball bat, and I
11:17AM 10 don't remember ever having a report or seeing a report saying
11 that this kid had been hit in the head with a baseball bat.

12 Q. Did you confront CW-1 about it?

13 A. Not at all.

14 Q. You didn't say how come you're bragging about hitting this
15 kid with a baseball bat?

16 A. Not at all.

17 Q. Because you were confident, sir, that this was just a
18 cover story, correct?

19 A. Yes.

11:17AM 20 Q. Did you have any reason to believe that CW-1 was doing
21 things like this in circumstances where it was not a cover
22 story?

23 A. No.

24 Q. To this day?

25 A. To this day, I know of things that occurred, but then when

1 you were asking me, no. I wasn't aware of anything in
2 September of 2015.

3 Q. So whatever CW-1 was or was not doing in September 2015
4 that was not authorized by the FBI, you didn't know about?

5 MR. POHL: Objection.

6 THE COURT: I'm not sure I follow the question. Let's
7 start there. Rephrase.

8 Q. You since learned about some things that CW-1 was doing --

9 MR. POHL: Objection.

11:18AM 10 Q. -- that were unauthorized by the FBI?

11 THE COURT: I'll allow that. Yes or no.

12 A. Yes.

13 Q. But whatever those things were, you didn't know about them
14 back in September of 2015?

15 A. That is correct.

16 Q. When CW-1 made the statements on this tape, correct?

17 A. That is correct.

18 Q. Now, you testified on direct examination about the reasons
19 why Animal was not arrested after November 2nd, when he
11:18AM 20 confessed on tape?

21 A. Yes.

22 Q. Now, one of the reasons you gave was that you were
23 concerned about the safety of CW-1 and his family, six
24 individuals here and another 12 in El Salvador?

25 A. Give or take that number, yes.

1 Q. Isn't it fair to say, sir, that the government controlled
2 the timing of when that relocation process would begin?

3 A. Not at all.

4 Q. You couldn't have done that before?

5 A. No.

6 Q. Why not, sir?

7 A. Because when this fell in our lap, we weren't prepared and
8 we weren't prepared to bring his family into the country.

9 Q. Well, you could have located them as soon as he started
11:19AM 10 cooperating back in 2014 and 2013, correct?

11 A. I don't think we could have.

12 Q. Because he hadn't done enough to justify that effort, is
13 that your testimony?

14 A. I'm not saying that, either. I'm just saying we weren't
15 sure. In 2013, this was brand new. We didn't know what was
16 going on to say what we can and can't do for someone.

17 Q. You knew, sir, that in November 2015 the Boston Police had
18 located a witness who had information about the stabbing,
19 correct?

11:19AM 20 A. I believe that is correct.

21 Q. And is it fair to say that if you had wanted to, you could
22 have given the Boston Police Department a photograph of
23 Mr. Martinez and said why don't you put this photograph in a
24 photo array, a photo lineup, and show it to your witness? Did
25 you think about doing that, sir?

1 A. I wasn't aware of -- and no.

2 Q. You had a photo of Mr. Martinez, correct?

3 A. We did, yes.

4 Q. And you knew the Boston Police Department was working the
5 case as an active homicide investigation, correct?

6 A. We did, yes.

7 Q. And you knew they had a witness?

8 A. I wasn't aware of them having a witness to show a photo
9 array to, no.

11:20AM 10 Q. Did you know that they had already showed a photo array
11 with a different suspect to the witness?

12 A. I wasn't a part of that investigation to know what they
13 were and weren't doing at the time. I knew they were
14 investigating a homicide.

15 Q. And there were no Boston Police Officers assigned to your
16 task force back in November 2015, correct?

17 A. Not from the homicide unit, but we have a Boston Detective
18 assigned to the task force.

19 Q. You said that one of the reasons you wanted to bring
11:21AM 20 Animal -- you wanted Pelon, CW-1, to bring Animal back to
21 Boston so he'd be close when the big take down occurred,
22 correct?

23 A. Yes, we wanted to know where he was and we didn't have a
24 good solid working knowledge of where he was located in Newark,
25 New Jersey.

1 Q. Well, CW-1 was in contact with him by phone, correct?

2 A. Yes.

3 Q. And CW-1 went down to visit him, correct?

4 A. Yes.

5 Q. So CW-1 knew where he lived and how to find him?

6 A. Well, he had an idea of where he lived, but it doesn't
7 mean that we had solid proof that this is, you know, the exact
8 house he's living in. We had an idea, but we weren't sure, but
9 if we had him here, we would know exactly where he would be.

11:22AM 10 Q. Now, it's true, isn't it, that there are FBI offices all
11 around the country?

12 A. Yes.

13 Q. And pretty much every day all around the country, FBI
14 agents from one district arrest people on warrants issued by
15 other districts, correct?

16 A. That does occur. I don't know if it's every single day,
17 but, yes, we do make arrests for other field offices around the
18 country.

19 Q. And there's an office in the Newark area, correct?

11:22AM 20 A. There is a Newark office, yes.

21 Q. Now, you said you wanted to know where Animal was. When
22 you brought him back here -- and it was Pelon who brought him
23 back here, CW-1, correct?

24 A. Yes, we directed the CW to go down and pick him up and
25 bring him back.

1 Q. Did you take any steps to monitor his whereabouts?

2 A. We were doing our best at that time to monitor everyone we
3 were planning to arrest and their whereabouts.

4 Q. And were you conducting surveillance on Animal?

5 A. We were going out and looking at all the addresses where
6 all of the defendants were residing so we could try and put
7 them, as we call, to bed. That way when we go and hit the
8 houses in the morning, we're hitting the right house.

9 Q. But you weren't conducting surveillance in the sense of
11:23AM 10 following him around, right?

11 A. No.

12 Q. And did you give the Boston Police a heads-up that he was
13 back?

14 A. I don't remember if we told them that he was back or not.

15 Q. Now, I think you volunteered in response to -- I think it
16 was Mr. Iovieno's questions that December 2015 and January 2016
17 was the most stressful time of your professional career?

18 A. Started in November, yes.

19 Q. And part of the work was the work necessary to charge the
11:23AM 20 defendants?

21 A. Part of that was the work to charge, part of that was what
22 we had going on, part of that was the fact that my boss was
23 leaving and so I didn't have a supervisor and I was doing his
24 job and my job at that time.

25 Q. Part of it was dealing with the relocation of CW-1 and his

1 family?

2 A. Absolutely.

3 Q. You were preparing search warrants and arrest warrants,
4 correct?

5 A. We were in the grand jury, so the indictment would have
6 granted the arrest warrants, but we were also seeking search
7 warrants.

8 Q. Now, was there any other significant event relating to the
9 case that was causing you stress in that period, sir?

11:24AM 10 A. You'd have to be specific to say what was causing me
11 stress.

12 Q. I mean, can you think of anything as you sit here today,
13 anything else that was major going on in the investigation that
14 contributed to the stress that you volunteered?

15 A. Just the whole 9 yards of everything getting ready. We
16 were trying to indict, we were trying to make sure we kept the
17 community safe.

18 We had meetings that occurred, and each time we had a
19 meeting, we didn't have a transmitter so we couldn't listen
11:25AM 20 realtime what was going on in the meetings, and I know that
21 MS-13 members have killed other members they suspect of
22 cooperating with law enforcement at these meetings, so you're
23 always concerned will they find the recorder on the CW, will
24 they kill him in that meeting, and we won't know, we won't be
25 able to go in there and try and save him because I have

1 participated in meetings where things go wrong, not in this
2 case, but in other cases where we have to come in and save
3 either a CW or an undercover. So all those things at once was
4 very stressful.

5 MR. MURPHY: May I approach, your Honor?

6 THE COURT: Yes.

7 MR. MURPHY: I'm sorry. I meant sidebar.

8 (THE FOLLOWING OCCURRED AT SIDEBAR:)

9 MR. MURPHY: Your Honor, I think at this point I would
11:25AM 10 like to ask the following question:

11 Isn't it true that you were told in December of 2015
12 that Pelon participated in the armed robberies of a number of
13 gypsy cab drivers in East Boston and Chelsea, along with -- I
14 think at this point, your Honor, there's been a foundation laid
15 for that relevance.

16 I would say, Number 1, he testified about why he
17 didn't have any concerns about Pelon having smashed
18 Irvin De Paz in the head. I think that he also has testified
19 to a whole litany of things about why he was stressed in
11:26AM 20 November, December, January of 2015, and, frankly, I think it's
21 incredible that he would say all that but omit the fact that he
22 learned that his own cooperating witness had been out there
23 committing crime.

24 THE COURT: What does any of this have to do with the
25 guilt or innocence of any of these defendants?

1 MR. MURPHY: It goes to the credibility of this
2 witness who's been allowed to testify about MS-13 in a way,
3 your Honor, which suggested anybody who joins MS-13 is guilty
4 of the charges that --

5 THE COURT: He didn't testify about that.

6 MR. MURPHY: I say I think that's the logical
7 inference of his testimony, your Honor. That it's all about
8 violence, that it's a rule that they kill people, so I think it
9 goes directly to his credibility, your Honor, and I think it's
11:27AM 10 relevant. It's relevant. He's been presented as a person who
11 conducted a detailed thorough investigation, and the fact that
12 this stuff was going on under his nose is relevant to his
13 overall credibility as a witness.

14 THE COURT: The government, what's your response?

15 MS. LAWRENCE: That information had already been
16 brought out. I think you allowed him in court to admit to the
17 fact that he was committing unauthorized acts while he was
18 under the cooperation agreement that's been brought out on
19 cross-examination, and I don't see any reason why we need to go
11:28AM 20 into the details of that. I don't know how this is remotely
21 relevant to the point we're trying to make.

22 THE COURT: I'm going to be consistent and keep the
23 details of that out because I think it's irrelevant, but I
24 suppose to complete this completely irrelevant line of
25 testimony about his personal stress, which was irrelevant in

1 the first place and continues to be irrelevant, I would permit
2 you to ask isn't it true that the unauthorized -- that you
3 learned, you know, in November, whenever it was, that this was
4 when CW-1 was committing unauthorized acts and that added to
5 his stress but not the details of what those acts were.

6 MR. POHL: Your Honor, may I ask unauthorized criminal
7 acts?

8 THE COURT: Yes.

9 (SIDEBAR CONFERENCE WAS CONCLUDED)

11:28AM 10 Q. Special Agent, is it also fair to say that another thing
11 that was contributing to your stress in November and
12 December of 2015 was that you learned that CW-1, whom you
13 brought here, the FBI had brought here from El Salvador to work
14 for the FBI, had been committing unauthorized criminal acts
15 without your knowledge?

16 A. That didn't cause me any stress, no. I mean, not like
17 what you're suggesting, no.

18 MR. MURPHY: May I have a moment, your Honor?

19 THE COURT: Yes.

11:30AM 20 Q. Sir, I just want to return to one point. It's been your
21 experience that sometimes people who are speaking to law
22 enforcement exaggerate and embellish what they have done,
23 correct?

24 A. Yes, people have done that, yes.

25 MR. MURPHY: Thank you, your Honor. Nothing further.

1 THE COURT: Mr. Lopez.

2 MR. LOPEZ: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MR. LOPEZ:

5 Q. Good morning, Agent Wood.

6 A. Good morning, sir.

7 Q. My name is Scott Lopez. I represent Edwin Guzman. Now, I
8 think you testified on your direct that MS-13 began as a
9 nonviolent gang?

11:31AM 10 A. I don't know if I said nonviolent, I said they formed a
11 gang in 1979.

12 Q. And that was the Stoners?

13 A. Yes.

14 Q. And the Stoners basically existed to get stoned?

15 A. They did smoke marijuana, yes.

16 Q. And to listen to hard rock?

17 A. That was another thing that they did, yes.

18 Q. And would you agree with me that most aspects of gang life
19 are nonviolent?

11:32AM 20 A. I would disagree with you on that one.

21 Q. Well, would you agree that gangs hang out, socialize on
22 street corners, alleyways, in front of apartment buildings, or
23 in strip malls?

24 A. Yes, I would say that gang members hang out together.

25 Q. A yes or no will suffice.

1 THE COURT: Well, not if it's not a fair response.

2 You can't give that instruction. Put another question to him.

3 Q. Would you agree that gang members sometimes watch
4 television, watch movies, or play video games?

5 A. Yes, they would do that.

6 Q. Okay. And they drink beer?

7 A. I imagine they drink beer.

8 Q. Or alcohol?

9 A. Yes.

11:32AM 10 Q. Hang out at each other's homes?

11 A. Yes.

12 Q. They smoke marijuana?

13 A. Some do, yes.

14 Q. And they like to party?

15 A. Yes.

16 Q. And they like to hang out in parks?

17 A. I don't think that's a yes or no question.

18 Q. Okay. And some of them work part-time jobs?

19 A. Some.

11:33AM 20 Q. And so there are many things that gang members do that are
21 not violent, would you agree?

22 A. I still don't know if I'd completely agree with that
23 statement.

24 Q. Well, could you agree to any extent?

25 A. No, I think that what I've seen in my experience is that

1 gang members form gangs to be violent and control their
2 territory, so to say that they're not violent, I just don't
3 agree with.

4 Q. And that's based on your experience as an FBI agent?

5 A. Yes.

6 Q. Do you think your view of gangs might be a little skewed
7 by your experience as an FBI agent?

8 A. No.

9 Q. Now, most gang members are recruited when they are
11:34AM 10 teenagers?

11 A. That has been a predominant -- I'm trying to think of the
12 word, it's escaping, but yes. I've seen high school students,
13 and I've seen as low as middle school kids being recruited into
14 the gangs.

15 Q. And high school students getting tattoos?

16 A. I think you have to be 18 to get a tattoo, so I'm sure
17 some underage kids get tattoos, but I don't know when or how.

18 Q. Are you saying in your experience as an FBI agent, you've
19 never seen an underage teenager with a tattoo?

11:34AM 20 A. No, I have seen some underage, but I'm just saying it's
21 illegal. It's usually a little harder for them to get tattoos.

22 Q. Well, so are violent acts, but according to you, that's
23 all they do. I take that back, your Honor. Now, do you see a
24 correlation between adolescents and alcohol?

25 MR. POHL: Objection, on relevance grounds.

1 THE COURT: Sustained.

2 Q. What about adolescents and drugs?

3 MR. POHL: Objection.

4 THE COURT: Sustained. I don't think he's an expert
5 on adolescents.

6 MR. LOPEZ: Well, actually, your Honor, that's what he
7 was put forth as. May I be heard?

8 THE COURT: No, he's talked about gangs. He doesn't
9 talk about adolescents. Go ahead. Put another question to
11:35AM 10 him.

11 Q. Do you know if there's any correlation between gang
12 membership and female companionship?

13 MR. POHL: Objection.

14 THE COURT: I'll allow that.

15 A. In what sense do you mean?

16 Q. Well, I'm a high school student, I'm a gang member, and
17 girls are attracted to me. Does that happen? Yes or no.

18 A. I was going to say I don't know if that's quite yes or no
19 because I think all adolescent boys and girls are attracted to
11:36AM 20 one another.

21 Q. Exactly. And if your identity is attractive, that's a
22 good thing, right?

23 A. Certain things can be attractive, yes.

24 Q. Now, throughout this investigation or through most of it,
25 Mr. Guzman was referred to in many of the reports by the

1 nickname Playa. Do you agree?

2 A. Player, Playa, yes.

3 Q. No, no. Playa, not Player?

4 A. Well, I'm not very good at dropping the Rs, so I always
5 called him Player, but, yes.

6 Q. And then as we've got closer to trial, everything got
7 changed to Playa, right?

8 A. Well, since I came in on the reinvestigation as a co-case
9 agent in 2015, I always called him Player.

11:36AM 10 Q. Now, do you know what Playa means in Spanish?

11 A. No, I'm not a very good Spanish speaker.

12 Q. Do you know why Mr. Guzman's nickname is Playa?

13 A. No.

14 Q. Do you know whether or not he got that name because he was
15 a lady's man?

16 MR. POHL: Objection.

17 THE COURT: That was your objection?

18 MR. POHL: Yes.

19 THE COURT: If you know how he got his nickname, you
11:37AM 20 can say so, but otherwise.

21 A. I don't know.

22 Q. Now, would you agree that the average age of most gang
23 members when they're recruited is about 15?

24 A. I can't agree to that, no.

25 Q. And some join as young as 13?

1 A. Again, I know -- depending on where you are, I've seen it
2 younger than that.

3 Q. And in 2015, I think you testified that some were as young
4 as 11 or 12?

5 A. That is correct.

6 Q. And that was in November of 2015?

7 A. Yes.

8 Q. And that was at that time a recent phenomenon, right?

9 A. That was more in El Salvador, but, yes.

11:37AM 10 Q. And that was in El Salvador, but those recruits were
11 coming into the United States?

12 A. Yes.

13 Q. Okay. And who is Special Agent David LeValle?

14 A. I'd have to see his name.

15 Q. You're not familiar with his role in the MS-13
16 investigation in Virginia?

17 A. Again, I'd have to see him. I'm not familiar with every
18 single MS-13 investigator in the United States.

19 Q. Well, in 2016, he was interviewed and he said the mass
11:38AM 20 migration of unaccompanied minors from Central America in 2014
21 created a whole new crop of recruits. My question is do you
22 agree with his assessments?

23 A. With the unoccupied minor program, I would say there's a
24 lot of truth to that, yes.

25 Q. So, in 2014, things began to change vis-à-vis MS-13 and

1 young recruits?

2 A. Yes, that was a general.

3 Q. And, in fact, some of those young men who came in, as
4 young as 11 or 12, had already committed murders in
5 El Salvador, right?

6 A. I would say there were probably a little older than 11 or
7 12, they were recruited at 11 or 12, and then if they had
8 already killed someone that, yes, they would be coming in
9 across the border, but I would say they were probably at that
11:39AM 10 point between 13 to 16.

11 Q. But that was a new phenomenon that was being discovered in
12 2014 by the FBI, right?

13 A. Yes.

14 Q. Okay. Now, between 2000, the early 2000 and 2012, would
15 you agree that MS-13 was mostly in hibernation?

16 A. I would not agree with that.

17 Q. Well, you started in the gang unit in 2004?

18 A. 2002.

19 Q. 2002, and this indictment was filed in 2016, right?

11:40AM 20 A. Correct.

21 Q. And the investigation began in 2012?

22 A. Correct.

23 Q. So if these MS-13 cliques existed between 2000 and 2012,
24 there weren't any prosecutions of them, right?

25 A. Not federally, no.

1 Q. Now, when you look at gang members, do you differentiate
2 between violent and nonviolent gang members?

3 A. They are all violent to me. A gang is a violent gang.

4 Q. During the course of your investigation in this case, did
5 you categorize MS-13 gang members?

6 A. What do you mean categorize?

7 Q. Well, are you aware that there are peripheral gang members
8 of MS-13?

9 A. Well, I believe I testified that you have your paros that
11:41AM 10 are the new brand new recruits, they're under observation, then

11 your chequeos, and then your homeboys.

12 Q. I'm talking about homeboys. Are there peripheral homeboys
13 that you're aware of?

14 A. No, you're a homeboy.

15 Q. Are there core members of the group that you're aware of?

16 A. If you're a homeboy, you're a homeboy, sir.

17 Q. Are there hard core members of the group that you're aware
18 of?

19 A. Again, sir, if you're a homeboy, you're a homeboy.

11:41AM 20 Q. So just one broad stroke, anyone who's a homeboy is hard
21 core?

22 A. Yes, sir.

23 Q. Are you aware that only about 5 percent of hardcore MS-13
24 members commit violent crimes?

25 A. I would disagree with that, sir.

1 Q. Well, you said that you've been studying this group since
2 2002. Have you done any reading on it?

3 A. Yes.

4 Q. Have you read any books on it?

5 A. Not books, no.

6 Q. You've never read a book about MS-13?

7 A. No, I've read the intelligence documents that the FBI puts
8 out.

9 Q. So the source of your information has all been law
11:42AM 10 enforcement sources?

11 A. And debriefing of or MS-13 gang members themselves.

12 Q. Are you aware of a rule in MS-13, in the MS-13 gang, that
13 allows older members to step away from the gang life and
14 essentially retire or become comado (ph)?

15 A. In my investigation, I knew things like that occurred, but
16 then by 2015, well, we had learned that the way to get out of
17 the gang was to find church, and then you were out of the gang.

18 Q. I think you previously testified that although that was an
19 option, that you needed permission?

11:43AM 20 A. Well, you had to go to the leaders and say I found church,
21 I found God, I want to leave the gang.

22 Q. And that permission was rarely granted?

23 A. No, no, I didn't say permission was rarely granted. I
24 said that they would be granted permission. I also said
25 that --

1 Q. So --

2 THE COURT: Don't interrupt him.

3 A. At an East Coast Program meeting, the leader said surveil
4 those who have sought to leave the gangs through church and God
5 to make sure that they are, in fact, going to church, they are
6 following the way of God, because if not, then we will kill
7 them.

8 Q. And so you're basing your information, your knowledge
9 about finding God based on what one of the leaders said?

11:43AM 10 A. What the whole, all the leaders in that meeting were
11 agreeing to.

12 Q. Well, prior to that, were you aware that that was a way
13 out of the gang?

14 A. Well, like all gangs, I've known --

15 Q. Sir, were you aware that that was a way out of the gang
16 prior to that? Yes or no.

17 A. What part? The God?

18 Q. Prior to that meeting, were you aware that finding God was
19 a way out of the gang? Yes or no.

11:44AM 20 A. Yes, I knew that finding God was a way out.

21 Q. And were you aware that there were other ways out?

22 A. At that point in the investigation, it was you either died
23 or you found God.

24 Q. And that was in 2015?

25 A. Correct.

1 Q. What about from 2000 to 2015? Was there another way that
2 you knew about as someone who is so knowledgeable about MS-13
3 if there was another way out?

4 A. Well, again, in 2015, when I learned, I'm not sure when
5 finding God first came into place. I knew that like other
6 gangs, MS-13, if you had been in long enough --

7 Q. I'm concerned about --

8 THE COURT: Please don't interrupt him.

9 MR. LOPEZ: But, your Honor --

11:45AM 10 THE COURT: Please. I get to control the questioning
11 and answering, Mr. Lopez. Don't interrupt me, or the witness.
12 Okay. Please continue your answer.

13 A. So I knew that like other gangs, senior long-term members
14 could get out in a retirement phase, but again, as I said, when
15 I took over the case, I became involved in the case, it was
16 finding God or you're dead.

17 Q. So with respect to other gangs, you were aware that there
18 was a way to retire from gang life?

19 A. I said other gangs and MS-13. I said it was a broad range
11:45AM 20 of gangs.

21 Q. So both other gangs and MS-13 members could retire,
22 correct?

23 A. Yes.

24 Q. Without finding God, correct?

25 A. Yes.

1 Q. And without being killed, correct?

2 A. Yes.

3 THE COURT: Let me -- are you changing to another
4 subject now?

5 MR. LOPEZ: Yes, I am.

6 THE COURT: Let's take a break.

7 THE CLERK: All rise.

8 (A recess was taken.)

9 THE CLERK: All rise for the jury.

12:00PM 10 (JURORS ENTERED THE COURTROOM.)

11 THE CLERK: Thank you. You may be seated. Court is
12 now back in session.

13 THE COURT: Mr. Lopez.

14 MR. MURPHY: Thank you, your Honor. May I approach
15 the witness, your Honor?

16 THE COURT: Yes.

17 Q. Agent, I've put a book before you entitled *Gangsters*
18 *Without Borders: An Ethnography of a Salvadoran Street Gang* by
19 Professor Thomas W. Ward?

12:01PM 20 A. Yes, I see this, yes.

21 Q. Have you seen that before?

22 A. No.

23 Q. I take it you haven't read it?

24 A. No, sir.

25 Q. And are you familiar with what an ethnographic study is?

1 A. I am not, no.

2 Q. Well, do you know what ethnography is?

3 A. No.

4 Q. Do you know whether it's a branch of anthropology that
5 involves trying to understand how people or cultures live?

6 A. Again, I don't know.

7 Q. Have you ever seen any other book on MS-13?

8 A. I have not read any other books on MS-13.

9 MR. MURPHY: Your Honor, I'd like to ask him about
12:02PM 10 some passages in this book.

11 THE COURT: Well, I think we need a foundation under
12 Rule 803, 18(b).

13 MR. MURPHY: Well, your Honor --

14 THE COURT: I mean, he's not acknowledged as an
15 authority, and we don't have any other testimony.

16 MR. MURPHY: Correct, but you can take judicial notice
17 of it.

18 THE COURT: I'm not sure I can do that. Let me see
19 that book. Well, I'm not sure I can do that. To do that, it
12:03PM 20 has to be beyond dispute. I just don't know one way or the
21 other. I don't think I can take judicial notice of it.

22 Q. Now, directing your attention to CW-1 --

23 A. Yes, sir.

24 Q. So I just want to be clear, his mission was to take down
25 MS-13, right?

1 A. No, that's my mission, sir. His mission is to cooperate
2 with the Federal Government.

3 Q. So your mission was to take down MS-13?

4 A. My mission is to investigate violent street gangs, in this
5 case, MS-13, disrupt and dismantle them.

6 Q. And CW-1 was authorized to lie, right?

7 A. I'm not sure what you mean by that, sir.

8 Q. Well, he was authorized to tell falsehoods to gang members
9 in order to induce them into making incriminatory statements,
12:04PM 10 right?

11 A. I don't think we induced anyone, as you're trying to
12 reference.

13 Q. Well, Mr. Murphy asked you some questions about whether or
14 not you believed the statements in the transcript that he
15 showed you and you said you didn't believe him?

16 A. Oh, in that sense, absolutely, yes.

17 Q. So he lied, right? In your mind, he lied?

18 A. Yes.

19 Q. Because you didn't believe what he said in those tapes?

12:05PM 20 A. Correct.

21 Q. So he was authorized to lie?

22 A. He's authorized to keep to his story of being an MS-13
23 gang member.

24 Q. He was authorized to have a cover story?

25 A. Yes.

1 Q. And the cover story was a lie?

2 A. Yes.

3 Q. So he was authorized to lie?

4 A. Yes.

5 Q. And he was authorized to sell drugs?

6 A. No, he did not sell drugs.

7 Q. Oh, he was authorized to participate in protection
8 details?

9 A. Correct.

12:05PM 10 Q. And he wasn't authorized to sell drugs?

11 A. No, we purchased drugs from targets, and then he did the
12 protection details. That's not selling drugs to civilians.

13 Q. And he was authorized to drive a gypsy cab?

14 A. Yes.

15 Q. And a gypsy cab is an illegal cab?

16 A. Yes.

17 Q. And you, the FBI, provided him with the very cab to do
18 that?

19 A. Yes.

12:05PM 20 Q. Now, he wasn't authorized to commit murder?

21 A. Correct.

22 Q. And he wasn't authorized to commit attempted murder?

23 A. Correct.

24 Q. Or assault with intent to murder?

25 A. Correct.

1 Q. Or robbery?

2 A. Correct.

3 Q. Or attempted robberies?

4 A. Correct.

5 Q. Now, was he authorized to bring Muerto and Brujo to the
6 Highland Street Park in Chelsea on May 12, 2015?

7 A. We did not talk to him before that, no.

8 Q. So he did that on his own?

9 A. He did that with the gang, yes.

12:06PM 10 Q. And then afterwards he told you that he really didn't do
11 anything?

12 MR. POHL: Objection.

13 THE COURT: I'm sorry, is there an objection?

14 MR. POHL: Yes.

15 THE COURT: Let me hear the question.

16 MR. LOPEZ: I'll strike the question, your Honor.

17 Q. Was he authorized to participate in that attempted murder
18 of Miner Ochoa?

19 MR. POHL: Objection.

12:07PM 20 THE COURT: I'll allow it. Overruled.

21 A. He was not participating when we interviewed him. He said
22 he drove there and that Muerto stabbed the kid, but he did not
23 stab him.

24 Q. Can you try to answer the question I asked instead of the
25 question you want me to ask? The question is did you authorize

1 him to participate in the attempted murder of Miner Ochoa?

2 A. No.

3 Q. And you learned later that he actually drove the person
4 who stabbed Mr. Ochoa to the scene?

5 A. We found out almost immediately that yes, he was there.

6 Q. And he drove them from the scene?

7 A. Yes.

8 Q. Now, if Mr. Guzman had done that, Mr. Guzman could be
9 charged with conspiracy to commit attempted murder, right?

12:08PM 10 A. Yes.

11 Q. But you didn't charge CW-1 with conspiracy to commit
12 attempted murder?

13 A. No, we charged the stabber.

14 Q. Who is now cooperating with the government?

15 A. Yes.

16 Q. So, this investigation began around March of 2012?

17 A. I believe so, yes.

18 Q. And the indictment was unsealed in January of 2016?

19 A. Yes.

12:08PM 20 Q. So nearly a four-year investigation?

21 A. Correct.

22 Q. And would you agree with me that all you needed for the
23 indictment to be filed was probable cause?

24 A. I don't know if I can answer the way you're asking that
25 question.

1 Q. Are you aware of what the standard of proof is for an
2 indictment?

3 MR. POHL: Objection.

4 THE COURT: Well, I mean you're asking him a legal
5 principle. To convict someone based on an indictment, it has
6 to be proof beyond a reasonable doubt. Put another question to
7 the witness.

8 Q. You're an FBI agent?

9 A. Yes, sir.

12:09PM 10 Q. For 18 years?

11 A. Yes, sir.

12 Q. And do you know what you need in order to get an
13 indictment issued?

14 A. I know what I need.

15 Q. And you need probable cause, right?

16 A. Yes.

17 Q. And that's to say a crime probably was committed?

18 A. Correct.

19 Q. And proof that something probably happened?

12:09PM 20 A. To charge, yes.

21 Q. It's not proof beyond a reasonable doubt?

22 A. Correct.

23 Q. Now, before the indictment was filed -- strike that. Did
24 you conduct any investigation into Mr. Guzman's background
25 before the indictment was filed?

1 A. What kind of background?

2 Q. Well, you're an FBI agent. You know how to do a
3 background check, don't you?

4 A. Yes.

5 Q. Okay. Did you do a background check of Mr. Guzman before
6 you filed the indictment?

7 A. I had the evidence that the FBI had gathered over the
8 course of the investigation, and that's what I had.

9 Q. Sir, we're going to try this again, and I'm going to ask
12:10PM 10 you to answer the question I asked, not the question you wanted
11 me to ask. Did you conduct an investigation into Mr. Guzman's
12 background before you -- before the indictment was filed?

13 A. Again, that's not a complete yes or no question. I know
14 what you're trying to ask me, but the answer isn't a simple yes
15 or no the way you're asking, so --

16 Q. Did you determine whether he was in the calmado stage in
17 his membership in the gang?

18 A. Not at all, he was not.

19 Q. Did you determine what age he was when he became a member?

12:10PM 20 A. I did not.

21 Q. Did you determine what age he was when he got a tattoo?

22 A. I did not.

23 Q. Did you determine whether he was married?

24 A. I did not.

25 Q. Did you determine whether he had two children?

1 A. I had not.

2 Q. Did you know that -- did you determine whether he had full
3 employment?

4 MR. POHL: Objection.

5 THE COURT: Sustained.

6 Q. Did you know anything about his work history?

7 MR. POHL: Objection.

8 THE COURT: Sustained.

9 Q. Did you know that he was a home owner?

12:11PM 10 MR. POHL: Objection.

11 THE COURT: Sustained.

12 Q. Did you know that he was a taxpayer?

13 MR. POHL: Objection.

14 THE COURT: Sustained. All right. Let's move on.

15 Q. Now, did he have any convictions or drug dealing?

16 MR. POHL: Objection.

17 THE COURT: Sustained.

18 MR. LOPEZ: Your Honor, may I approach?

19 THE COURT: No.

12:11PM 20 Q. Now, Mr. Murphy talked about the green light that was put
21 on Herzzon Sandoval?

22 A. I don't think we ever fully -- we got word that there was
23 a green light. I don't know if we every got proof that there
24 was a full green light issued.

25 Q. I don't want to quibble with you about interpreting the

1 evidence. That's for the jury. My question is that at some
2 point, you went and warned Mr. Sandoval, right?

3 A. Yes, I did.

4 Q. Now, in that meeting in December, 2015 in Virginia, there
5 was also discussion of Mr. Guzman, right?

6 A. I thought the transcript I read was talking about Casper,
7 not your client, sir.

8 Q. Do you know whether or not Mr. Guzman's name was raised in
9 that meeting?

12:12PM 10 A. I'd have to read the whole transcript and not the excerpt
11 that was provided to me.

12 Q. So as you sit here today, you don't know?

13 A. I'd have to review it. I don't remember.

14 Q. So you don't know today, as you sit here?

15 A. I don't remember. If I had the transcript, I could easily
16 refresh my memory.

17 Q. Well, I think you testified that Mr. Guzman was the second
18 in command?

19 A. That is correct.

12:13PM 20 Q. By the way, what are the duties of the second in command
21 based on your experience with respect to MS-13? What exactly
22 do they do?

23 A. They're the second in command. He collected dues when he
24 was -- they were hosting meetings, and if Casper wasn't around,
25 he would be in charge, but Casper was here, and so Casper was

1 the first word, he was the second word.

2 Q. So, his function was primarily ceremonial?

3 A. No, it would be like a commander in the Army and the
4 executive commander, the executive officer for the Army.

5 Q. So you said that he collected dues?

6 A. Yes.

7 Q. And wouldn't the treasurer collect dues?

8 A. No, not necessarily.

9 Q. And I think you said that if Casper wasn't there, that he
12:13PM 10 would run meetings?

11 A. He could run meetings or he'd be someone who would issue
12 commands.

13 Q. Over the four-career investigation in this case, did you
14 come upon any meetings that Mr. Guzman started and ran?

15 A. Me, personally, no. I don't know.

16 Q. Now, after that meeting in Virginia among the MS
17 leadership, no one warned Mr. Guzman that, as a leader, his
18 life might be in danger as well, right?

19 A. That is right.

12:14PM 20 Q. Now, I think you said that this case -- in this case you
21 targeted MS-13?

22 A. Yes.

23 Q. And you targeted Mr. Guzman?

24 A. When I became included in the case, yes, and reviewing
25 other reports and everything, he was a target from the start,

1 yes.

2 Q. And you used CW-1 to target MS-13.

3 A. Yes.

4 Q. And you imbedded CW-1 into the Eastside clique?

5 A. That's the clique that accepted him. We didn't just say
6 this is a clique you're in. He -- that's who recruited him
7 into the clique.

8 Q. And you encouraged CW-1 to try to get Eastside clique
9 members to commit violent acts, right?

12:15PM 10 A. No, I would not say he recruited people on the Eastside to
11 commit violent acts.

12 Q. Have you really listened to the tapes in this case?

13 A. Yes, I have.

14 Q. And you don't have any memory of CW-1 ever encouraging
15 Muerto or Brujo or Tigre to commit violent acts against others?

16 A. Not the way you're suggesting, no.

17 Q. You don't have any memory of CW-1 complaining that
18 Mr. Guzman and Mr. Sandoval didn't want people to go out and
19 commit violent acts?

12:15PM 20 A. I remember a meeting where Casper, Mr. Sandoval and
21 Mr. Guzman wanted the CW-1 and Muerto punished, disciplined for
22 talking to East Coast Program leaders. And they made the case,
23 they made the pitch, the whole clique got to listen to the
24 responses, and the clique voted that, no, they should not be
25 punished.

1 Q. Let me try again. In your review of the tapes, you
2 haven't seen any conversations where Mr. Guzman and
3 Mr. Sandoval are telling clique members not to go out into the
4 street?

5 A. To make sure that I understand your question properly, are
6 you saying that they are telling people not to go out and do
7 violent acts?

8 Q. Yes.

9 A. That's a tough -- let me think how to answer that question
12:16PM 10 because I know how you're getting, sir. I remember
11 conversations where I believe it was Casper, he said, "We've
12 already done our dirt." I remember conversations where they
13 issued a punishment.

14 Q. Sir --

15 MR. LOPEZ: Your Honor, can I move to strike this
16 answer? It's not responsive to my question.

17 A. I'm not sure where your question --

18 THE COURT: Hold on. Hold on. The precise question
19 was have you seen conversations where Guzman and Sandoval are
12:17PM 20 telling clique members not to go out into the street?

21 MR. LOPEZ: That's a --

22 THE COURT: Go out into the street. Answer the
23 question, go ahead.

24 A. No, I would disagree. I would say the orders were, you
25 know, you need to have your presence known out on the street.

1 I don't -- the way you're phrasing the question is difficult
2 for me to answer.

3 THE COURT: All right. Let's stop and put another
4 question.

5 Q. Did CW try to get Mr. Guzman to commit crimes?

6 A. I don't know if he had asked Mr. Guzman to participate in
7 the protection detail. Again, I'm not sure what kind of crimes
8 you're talking about. I don't know.

9 Q. Well, with respect to the protection detail, do you know
12:18PM 10 whether Mr. Guzman refused to participate?

11 A. I know that both Mr. Sandoval and Mr. Guzman did not
12 participate.

13 Q. Because they were working?

14 MR. POHL: Objection.

15 THE COURT: I'll let you say whatever was on the
16 tapes.

17 A. I don't know the answer of why they did not participate.
18 I wasn't --

19 Q. Well, as part of your investigation, wouldn't that be
12:18PM 20 important to know whether or not they were actively
21 participating in crimes?

22 A. I knew they were actively participating in crimes.

23 Q. During the course of this investigation?

24 A. Yes. Being the leaders of the gang --

25 THE COURT: Stop. Okay. Put another question to him.

1 MR. MURPHY: The last answer, your Honor.

2 THE COURT: The last bit will be struck, yes. Go
3 ahead.

4 Q. Now, you encouraged CW-1 to get Joel Martinez, the Animal,
5 into the Eastside clique, right?

6 A. We directed the CW to ask if the clique would accept him
7 into that clique, yes.

8 Q. Well, I don't want to get into semantics here, but by
9 suggesting to CW-1 to get him into the clique, you wanted him
12:19PM 10 to succeed, right?

11 A. I wanted to see if the clique leaders would accept Animal
12 into the clique.

13 Q. So you encouraged CW to try to do that?

14 A. We asked the CW, we listened to a phone call where Casper
15 talks to Animal, and he says, "Come up here so we can observe
16 you."

17 Q. And CW persuaded Muerto to support Animal getting brought
18 into the clique, right?

19 A. I don't know where Muerto came in other than I do know
12:20PM 20 that Muerto went down with the CW to bring Animal back.

21 Q. You are the lead case agent on this case, right?

22 A. Oh, yes.

23 Q. Okay. And Mr. Guzman was against the idea of Mr. Martinez
24 being jumped into the clique, right?

25 A. I would say no to the way you phrased that question.

1 Q. Is Mr. Guzman on any tape saying that he wants
2 Joel Martinez to be brought into the clique that you're aware
3 of?

4 A. I know that in the jump-in meeting, he's a participant of
5 that meeting and he's all for it.

6 Q. Well, the tape that you played doesn't show him, right?

7 A. Oh, I think it does. I remember that someone said,
8 pointed him out to me two -- a little over two years ago.

9 Q. So what you're saying, if I understand correctly, is that
12:21PM 10 his mere presence indicated his approval, correct?

11 A. It was more than his presence, he welcomed him into the
12 MS-13 gang.

13 Q. Well, let's talk about that because that's where I was
14 going. Now, early on in this case you --

15 MR. POHL: Judge, objection.

16 THE COURT: There's no question yet.

17 Q. You believed that it was Mr. Guzman who said when
18 Mr. Martinez was jumped in, "Welcome to the Mara," right?

19 MR. POHL: Objection.

12:21PM 20 THE COURT: I'll allow that.

21 A. Yes.

22 Q. And you've subsequently learned that wasn't him, right?

23 A. I have not learned that, no.

24 Q. You have not learned that?

25 A. My impression was he was there and he welcomed him to the

1 Mara.

2 Q. So if you're wrong about that, that would be news to you
3 as the lead case agent, right?

4 A. The last I remember is he was there welcoming him into the
5 Mara like the rest of the gang.

6 Q. But did he say the words "Welcome to the Mara"?

7 A. That's what I was told, yes.

8 Q. That's what you were told?

9 A. Yes, I don't speak Spanish.

12:22PM 10 Q. Okay. Now, would it be fair to say that this prosecution
11 has been good for your career?

12 MR. POHL: Objection.

13 THE COURT: It's pretty argumentative. Sustained.

14 Q. Well, in 2016, you were promoted to supervisory special
15 agent?

16 A. I was.

17 Q. And that position came with a pay raise?

18 A. Not a very big one.

19 Q. But a pay raise, nonetheless?

12:23PM 20 A. Yes.

21 Q. And a higher profile within the FBI?

22 A. Actually, I thought I had a higher profile as a case agent
23 than I do as a supervisor.

24 Q. And that's led to speaking engagements?

25 A. I was speaking before I became a supervisor.

1 Q. And attendance at conferences?

2 A. I was doing that long before I ever became a supervisor.

3 Q. And you've hosted conferences here in Boston?

4 A. I have hosted, yes.

5 Q. And you've talked on the campus of the University of
6 Maryland, you've talked on the campus of Boston College, right?

7 A. I have.

8 Q. And in 2017, you went to the annual meeting of the
9 International Association of Chiefs of Police held in

12:23PM 10 Philadelphia, and you gave a briefing on the FBI Gang Task
11 Force, right?

12 A. Yes.

13 Q. And specifically the work that you did in this case?

14 A. Well, specifically for the work the task force did, not
15 just me.

16 Q. Now, you've previously testified that CW-1 was going to be
17 charged with a Hobbs Act robbery, right?

18 MR. POHL: Objection.

19 THE COURT: Sustained.

12:24PM 20 MR. LOPEZ: May I approach, your Honor?

21 (THE FOLLOWING OCCURRED AT SIDEBAR:)

22 THE COURT: Well, to begin, his prior testimony is
23 hearsay, but where are you going in terms of relevance? In
24 other words, you start with asking about previous testimony is
25 x.

1 MR. LOPEZ: It's inconsistent with his current
2 testimony that he --

3 THE COURT: We've heard nothing about Hobbs Act.

4 MR. LOPEZ: Well, about whether or not CW-1 was going
5 to be charged for the robberies that he did with Clacker and he
6 testified here that he wasn't going to be charged, and he
7 testified previously twice and in the affidavits to the Court
8 to get a search warrant that he was going to be charged.

9 THE COURT: First off, Hobbs Act is extortion, not
12:25PM 10 robbery, but, anyway, tell me where you're going with this.

11 MR. LOPEZ: It's inconsistent testimony.

12 THE COURT: All right. Mr. Pohl.

13 MR. POHL: I don't recall any testimony in this trial
14 about, you know, the nature of the charge or any of that. I
15 think we left all of that out because we, you know, I think as
16 we talked about -- I think this came on Friday, it became
17 relevant because of the connection in the November trial with
18 Clacker and the fact that that came up together, but in this
19 trial we haven't talked about it. We've had a generic
12:25PM 20 disclosure that there was an unauthorized activity while he was
21 cooperating, but that was --

22 THE COURT: I don't remember any testimony about him,
23 whether he would be charged or not charged.

24 MR. POHL: I agree.

25 THE COURT: So --

1 MR. LOPEZ: He didn't testify on direct that the CW
2 wasn't charged, that a decision subsequently was made not to
3 charge him?

4 THE COURT: Even assuming that's true, although I
5 don't remember. Let's assume it's true. How is it
6 inconsistent that at one point he thought that the person would
7 be charged? How is that inconsistent?

8 MR. LOPEZ: Your Honor, if the plan was to charge him,
9 and it didn't happen.

12:26PM 10 THE COURT: That's not a prior inconsistent statement
11 though. That just means your plan didn't -- you know, somebody
12 overruled him or he changed his mind.

13 MR. LOPEZ: Then he should have qualified his
14 testimony under oath that he might be charged, not that he will
15 be charged.

16 THE COURT: I'm not following the whole thing, so
17 sustained.

18 (SIDEBAR CONFERENCE WAS CONCLUDED)

19 Q. Now, I think you testified earlier that when the
12:27PM 20 translations that we've seen in this case, when they were done,
21 CW-1 actually had a role in determining the accuracy of the
22 tape?

23 A. He would provide to non-El Salvadorian speaking Spanish
24 translators the slang that El Salvadorians used, so when they
25 would go through, they could understand what was being said.

1 Q. And did people believe them when he told them those words?

2 MR. POHL: Objection.

3 THE COURT: Sustained.

4 MR. LOPEZ: No further questions.

5 THE COURT: Redirect. Thank you, your Honor.

6 REDIRECT EXAMINATION

7 BY MR. POHL:

8 Q. Good afternoon, Special Agent Wood.

9 A. Good afternoon, sir.

12:28PM 10 Q. I only have a few questions for you. There's been a
11 couple inquiries on cross-examination concerning the period of
12 time after the FBI recorded Animal on its -- on a video
13 recording talking about the Irvin De Paz murder and the time
14 that he was arrested. So can I ask you, you and members of the
15 task force did have conversations with the Boston Police
16 Department about that, correct?

17 A. We did.

18 Q. All right. And Mr. Murphy suggested you could have simply
19 given a picture of Mr. Martinez to the Boston Police
12:29PM 20 Department. You've been an investigator for 18 years, correct?

21 A. Yes.

22 Q. All right. And in your capacity as a federal law
23 enforcement agent, you're often called upon to meet with state
24 and local counterparts, correct?

25 THE COURT: You're not allowed to lead. Sustained.

1 MR. POHL: Thank you.

2 Q. In the 18 years that you've been a special agent, have you
3 met with state and local counterparts coordinating
4 investigations?

5 A. I have.

6 Q. All right. And during those conversations, what kind of
7 information -- can you just tell the jury something about that?
8 When those meetings occur, what type of information are you
9 typically exchanging?

12:29PM 10 THE COURT: Are you talking about in general or in
11 this case?

12 Q. Well, let's make it specific in this case. What kind of
13 information would you be exchanging in this case?

14 MR. MURPHY: Objection, your Honor.

15 THE COURT: I'll allow that as a very general matter.

16 A. We would provide information that we have evidence now
17 helping solve different crimes and that we're working towards
18 indictments and we're just trying to share information that we
19 can share that's allowed by the Attorney General.

12:30PM 20 Q. And one of the pieces of information in this case was the
21 recording?

22 A. Yes.

23 Q. All right. And when you had -- when you and the members
24 of the task force had those meetings, were you in a position to
25 provide them, the FBI, with that recording?

1 A. No.

2 MR. MURPHY: Objection, your Honor.

3 Q. And why not?

4 THE COURT: I'll allow that.

5 Q. Why not, Special Agent Wood?

6 A. Because it would expose the identity of our cooperating
7 witness, and by the Attorney General rules, we can't release
8 that information without certain authority from higher-ups.

9 Q. Was -- well, do you know when Joel Martinez was arrested
12:31PM 10 in this case?

11 A. I believe the take-down was January 29, 2016, so our
12 arrest for most of the subjects in this case were on that day,
13 but we had fugitives that were in New York, New Jersey, other
14 parts of the country that we had to track down.

15 Q. To the best of your knowledge as you sit here today, do
16 you remember when Joel Martinez was arrested in this case?

17 A. On that day, which would have been -- I believe it was
18 January 29, 2016.

19 Q. There was some questions during cross-examination about
12:31PM 20 the difference between a cooperating witness and a cooperating
21 defendant. I want to talk to you about that for just a few
22 minutes. In the course of your career as an FBI Special Agent,
23 can you tell the jury what it is that you mean when you used
24 the term "cooperating witness"?

25 A. It's a very broad term. The FBI has confidential

1 informants. One branch is a CI confidential informant that
2 just provides information but no evidence. You have to prove
3 what they tell you, it's just kind of information. Your
4 cooperating witness actually gathers evidence that we can then
5 bring here for you to review.

6 So that's -- in this case, we used a cooperating
7 witness, not a confidential informant.

8 Q. Okay. Now, that's a cooperating witness?

9 A. Correct.

12:32PM 10 Q. Okay. All right. A "cooperating defendant." Have you
11 heard that term used in the course of your career as a FBI
12 Special Agent?

13 A. Yes, I have.

14 Q. All right. So what's the difference between a cooperating
15 witness -- well, first of all, what is a cooperating defendant?

16 A. It's somebody that we have indicted, has been charged and
17 now they're seeking consideration on their sentence for
18 cooperating with the government.

19 Q. Okay. So, we've testified -- you've testified I think
12:33PM 20 several times concerning the protection details?

21 A. Yes.

22 Q. All right. And so you personally were on surveillance for
23 the October 2014 protection detail, correct?

24 A. I was, yes.

25 Q. And that protection detail involved a cooperating witness,

1 correct?

2 A. Yes.

3 Q. And that was who?

4 A. Pelon.

5 Q. Okay. And during the course of your surveillance on the
6 October 2014 protection detail, did you see or learn whether or
7 not Jose Hernandez Miguel was present?

8 A. Yes.

9 Q. All right. And Jose Hernandez Miguel is who?

12:33PM 10 A. Muerto.

11 Q. And at the time -- and was Jose Hernandez Miguel the only
12 MS-13 gang member present on that protection detail?

13 A. No.

14 Q. All right. And you may not have been physically present
15 for the protection detail before and the protection detail
16 after, correct?

17 A. That's correct.

18 Q. You've certainly reviewed the reports and recordings of
19 those protection details, correct?

12:34PM 20 A. I have.

21 Q. All right. Was Jose Hernandez Miguel, to the best of your
22 knowledge, involved in all three of the protection details?

23 A. Yes.

24 MR. MURPHY: Objection.

25 THE COURT: Sustained. The answer will be struck.

1 Q. Well, let me ask the question this way, Special Agent
2 Wood. You've talked in the protection details about a
3 cooperating witness being represent for the protection detail
4 you were on, correct?

5 A. Yes.

6 Q. And you used undercover police officers, correct?

7 A. Yes.

8 Q. All right. Sort of at the front and at the back?

9 A. Yes.

12:34PM 10 Q. All right. Is there any other cooperating witness
11 involved in the October 2014 protection detail?

12 A. No.

13 Q. I think you were asked about the location of the ESLS
14 clique meetings earlier today. At the time -- are you aware of
15 whether or not ESLS had clique meetings in other locations
16 other than the garage that we've seen in Exhibit 1?

17 A. Yes.

18 Q. All right. You became the case agent in 2015?

19 A. Yes.

12:35PM 20 Q. All right. At the time -- at your time in 2015, beginning
21 in 2015, was there -- where were the locations where ESLS held
22 its clique meetings?

23 A. The garage in Everett.

24 Q. All right. To the best of your knowledge, as you sit here
25 today, do you recall any other locations besides that garage

1 that we've seen in Exhibit 1 being the location of where ESLS
2 had its clique meetings?

3 A. I knew in one of the meetings they were outside of that
4 garage, but when I was present, all the meetings occurred at
5 that location in Everett.

6 Q. And you testified I think on -- you were asked on
7 cross-examination concerning recordings and how you made
8 recordings in this case. Special Agent Wood, both in terms of
9 the time you've had as the case agent and reviewing some of the
12:36PM 10 evidence that was gathered before you became a case agent,
11 could you estimate, as you sit here today, how many hours of
12 recordings the FBI made in connection with this investigation?

13 A. A few thousand, if not more. It was -- we made lots of
14 tape, we had -- as talked about with the consensual Title III
15 where the CW allowed us to intercept his phone calls. That's
16 just hours upon hours of recordings.

17 Q. And were there occasions when CW-1 advised you of a
18 meeting that you were not able to record it?

19 A. Yes.

12:37PM 20 Q. All right. How frequently did that happen?

21 A. It happened quite frequently.

22 Q. In 2015, Special Agent Wood, I think you testified that
23 the pace of the recordings of ESLS had sort of picked up?

24 A. Yes.

25 Q. And one of the meetings you recorded involving a beating,

1 correct?

2 A. Yes.

3 Q. Involved a beating. So I want to take a step back, not
4 talk specifically about the case but about your experience with
5 MS-13 and your conversations that you've had with other law
6 enforcement agents in El Salvador and throughout the country,
7 all right.

8 What can you tell the jury about the -- what kind of
9 person would be allowed into an MS-13 clique meeting?

12:38PM 10 MR. MURPHY: Objection, your Honor.

11 THE COURT: Sustained without a foundation.

12 Q. Well, let me start -- maybe I'll start specifically with
13 the garage recording. You've reviewed the clique, the recorded
14 meetings of ESLS at least in 2015, correct?

15 A. Yes.

16 Q. All right. What time of night -- what time of day would
17 those meetings typically begin?

18 A. It was at night.

19 Q. All right. And were you in a position through
12:38PM 20 surveillance to identify the people that were coming and going
21 from the garage?

22 A. No.

23 Q. Were you in a position to tell from your review of the
24 recordings whether the garage was closed or open?

25 A. I believe the garage was closed.

1 Q. And so were you -- and can you describe, when you looked
2 at the recordings, sort of what you -- how the meetings that
3 you recorded in the ESLS garage would commence?

4 A. I believe I testified that Casper would bring them
5 together and form a group where, instead of people being here,
6 there, talking, they all came together as a group.

7 Q. Well, let me put it this way. What is the -- the clique,
8 the clique, itself, right, the unit of a clique, how -- well,
9 when you testified about the sort of structure of MS-13
12:40PM 10 previously, what's the relationship between the clique and say
11 a larger program?

12 MR. MURPHY: Objection, your Honor.

13 THE COURT: Overruled.

14 MR. MURPHY: Would my objection stand, your Honor?

15 THE COURT: Yes.

16 A. The clique would report to regional East Coast or program
17 leaders, who would then report to the United States program
18 leader, who would report back to El Salvador.

19 Q. And based on your work on this investigation and
12:40PM 20 conversation with other agents, does MS-13 require cliques to
21 have meetings?

22 A. Yes, yes.

23 Q. Okay. And are those meetings open to the public?

24 A. No.

25 Q. So, what kind of people would be at a clique meeting?

1 A. Homeboys.

2 MR. MURPHY: Objection. Hearsay.

3 THE COURT: Sustained.

4 Q. Special Agent Wood, Mr. Murphy, on cross-examination,
5 asked you some questions about recordings that the FBI picked
6 up in 2015 concerning conversations about Casper, correct?

7 A. Yes.

8 Q. Do you remember that? All right. And some of those
9 conversations discussed what would happen to Casper, correct?

12:41PM 10 A. Yes.

11 Q. All right. Well, let me say this, Special Agent Wood. I
12 think you testified earlier that MS-13 has gang rivals,
13 correct?

14 A. Yes.

15 Q. Okay. And based on your work on this investigation, your
16 time in El Salvador, your conversations with other agents,
17 debriefing of cooperating witnesses and defendants, what does
18 MS-13 have to do to seek permission to kill a rival?

19 MR. MURPHY: Objection, your Honor.

12:42PM 20 THE COURT: Is this someone in another gang?

21 MR. POHL: Yes, not MS-13.

22 THE COURT: All right. I'll permit this testimony,
23 again, as a general matter about how MS-13 -- the witness
24 believes MS-13 ordinarily operates. Go ahead.

25 A. If there's a question of the identity, or -- if this

1 person is, they're not sure if the person is a member of the
2 gang, they need to get permission from their leaders, but there
3 is a standing order that if they have solid proof and they
4 could safely get away with it, kill the person on sight. If
5 they know that's an 18th Street gang member and they would have
6 their own little photographs that they collected from Facebook
7 or other social media, so they would know who was in a rival
8 gang, so if they saw them, they could assault them.

9 Q. Well, if you had say conversations or recordings which
10 discussed whether and how to discipline somebody and if the
11 conversations involved other MS-13 gang members, what
12 conclusion would you draw concerning whether or not that person
13 that was the subject of the conversation would be in the MS-13
14 gang?

15 MR. MURPHY: Objection.

16 THE COURT: Sustained.

17 Q. One or two last questions, Special Agent Wood. You
18 discussed the process by which the recordings were sort of
19 formed into transcripts, correct?

20 A. Yes.

21 Q. All right. And can you tell the jury -- well, at the risk
22 of going over old ground for one second, how many other agents
23 on the task force speak Spanish that were working on this case?

24 A. Only Trooper Depena and Trooper Estevez, I believe, are
25 Spanish speakers from the task force.

1 Q. All right. And you've reviewed many of the recordings
2 that took place, that were made in 2015, correct?

3 A. Yes.

4 Q. And let's talk about the clique meetings themselves. It's
5 fair to say that many of those are multi-party conversations,
6 correct?

7 A. Yes.

8 Q. Okay. And it's fair to say that many of the recordings in
9 2015 were not multi-party conversations?

12:44PM 10 A. Yes.

11 Q. All right. Mr. Murphy pulled up an example, I think, of
12 Exhibit 103. This is the conversation with CW-1 and Animal,
13 correct?

14 A. Yes, sir.

15 Q. All right. And that conversation -- just to remind the
16 jury, where did that conversation take place?

17 A. In the CW's vehicle.

18 Q. Okay. And where was Animal seated in the vehicle?

19 A. In the passenger's seat.

12:45PM 20 Q. And in addition to that, I think you testified -- there
21 are other examples in 2015 like that of conversations you
22 gathered in this investigation from CW-1's car, correct?

23 MR. MURPHY: Objection.

24 THE COURT: Yes, not the content of the investigation,
25 but you can answer the question as to how it was gathered. Go

1 ahead.

2 A. Yes.

3 Q. I'm putting up what's previously been admitted, your
4 Honor, as Exhibit Number 108. Do you remember that photograph,
5 Special Agent Wood?

6 A. Yes.

7 Q. Who was seated in the passenger seat?

8 A. That's Mr. Sandoval.

9 Q. And that photograph came from a conversation that was

12:46PM 10 recorded in 2015?

11 A. It did.

12 Q. And what were the circumstances of that conversation being
13 recorded?

14 A. This is where the CW, Mr. Sandoval, and Animal have a
15 telephone conversation.

16 Q. All right. Mr. Sandoval is in CW-1's car?

17 A. Yes.

18 Q. And seated where?

19 A. In the passenger seat.

20 Q. You were asked a couple questions about the -- I guess
21 what we'd call the jump-in video, the jump-in from January 8,
22 2016. Do you recall those questions?

23 A. Yes, I remember.

24 Q. And we played -- you saw an excerpt of that video,
25 correct?

1 A. Yes.

2 Q. All right. Prior to your testimony here today, have you
3 reviewed, maybe not all, but many of the recordings that were
4 made in 2015?

5 A. Yes.

6 Q. All right. What can you tell the jury about the full
7 length of the full Animal jump-in video?

8 A. It was a couple hours. It wasn't just that. It was a
9 longer period.

12:47PM 10 Q. You were asked a couple questions, I think both by
11 Mr. Norkunas and Mr. Lopez, about nicknames?

12 A. Yes.

13 Q. During your time in 2015 to today, you've reviewed reports
14 of this case, correct?

15 A. I have.

16 Q. And transcripts, correct?

17 A. I have.

18 Q. And it's fair to say that -- well, do many of those
19 transcripts contain the gang names or nicknames of the
12:48PM 20 defendants throughout this case, not just seated in this
21 courtroom?

22 A. Yes.

23 Q. All right. Are the spellings always consistent?

24 A. No.

25 Q. All right. When you hear the name CheChe spelled

1 C-h-e-C-h-e --

2 A. Yes.

3 Q. -- and C-h-e-C-h-a?

4 A. Yes.

5 Q. -- do those names describe the same person?

6 MR. NORKUNAS: Objection, Judge.

7 THE COURT: Sustained.

8 MR. POHL: Can I have just one moment, your Honor.

9 Thank you.

12:49PM 10 THE COURT: Mr. Iovieno, recross.

11 MR. IOVIENO: No, your Honor.

12 THE COURT: Mr. Norkunas.

13 MR. NORKUNAS: No, Judge.

14 THE COURT: Mr. Murphy.

15 MR. MURPHY: Briefly, your Honor.

16 RECROSS-EXAMINATION

17 BY MR. MURPHY:

18 Q. Special Agent Wood, you were not at the meetings between
19 the task force --

12:50PM 20 THE COURT: I'm sorry. If you're going to examine
21 from over there, can you make sure --

22 MR. MURPHY: I'll move over here.

23 THE COURT: Okay. Thanks.

24 Q. Mr. Pohl asked you about coordinating with the Boston
25 Police Department after you had learned that Joel Martinez

1 killed Mr. De Paz, correct? You recall those questions?

2 A. Yeah, I remember those questions, yes.

3 Q. You didn't participate in that meeting, correct?

4 A. There were several meetings, and I did participate in one.

5 Q. When was that meeting?

6 A. It was -- the one I participated in, I believe, was in
7 November of 2015.

8 Q. Did you write a report about that?

9 A. No.

12:50PM 10 Q. Is there any record at all of what was discussed in that
11 meeting to your knowledge?

12 A. No.

13 Q. And by the time of that meeting, where was Mr. Martinez?

14 A. New Jersey.

15 Q. Did you personally meet with the Boston Police Department
16 and tell them that Mr. Martinez was back?

17 A. No.

12:51PM 18 Q. You did not, I think we've already established, provide a
19 photograph of Mr. Martinez to the Boston Police Department so
20 that they could use it in a photo array, correct?

21 A. I did not, no.

22 Q. And it's not your testimony, is it, sir, that there is
23 some set of Attorney General or Department of Justice or FBI
24 guidelines that says that you couldn't have shared the
25 photograph you had of Joel Martinez with the Boston Police

1 Department?

2 A. No, I never testified to anything like that, no.

3 Q. I just wanted to make that clear, sir. You testified that
4 Mr. Martinez was arrested in connection with this case in late
5 January of 2016?

6 A. Yes.

7 Q. Did the FBI investigate -- you can just answer this yes or
8 no with the Court's permission. Did the FBI investigate a
9 crime that occurred on December 27, 2015 in connection with
10 this case?

11 A. You'd have to be more specific for me to answer that
12 question.

13 Q. Do you know whether, in this indictment, there are charges
14 relating to a stabbing that took place on December 27, 2015?

15 A. If you're referencing two stabbings that occurred around
16 the holidays, I am aware of two stabbings, and I'm familiar
17 with the stabbings, yes.

18 Q. And who participated in those stabbings?

19 MR. POHL: Objection.

12:53PM 20 THE COURT: Sustained.

21 MR. MURPHY: Thank you, your Honor.

22 THE COURT: Mr. Lopez.

23 MR. LOPEZ: No questions, your Honor.

24 THE COURT: Thank you. You may step down.

25 THE WITNESS: Thank you, your Honor.

1 THE COURT: All right. We have eight minutes to go.
2 I don't ordinarily like to break early. Are we on track,
3 Mr. Pohl?

4 MR. POHL: Maybe after the break we could talk about
5 the schedule for tomorrow.

6 THE COURT: Okay. We'll break early then rather than
7 have -- instead of eight minutes of testimony. Ladies and
8 gentlemen, remember my caution not to discuss the case among
9 yourselves or with anyone else, and we'll see you tomorrow at
12:53PM 10 9:00.

11 THE CLERK: All rise.

12 (JURORS EXITED THE COURTROOM.)

13 THE COURT: Mr. Pohl, the previous record in my
14 courtroom when the lawyers says one or two more questions is
15 17, and I'm pretty sure you blew past that. I'll have to count
16 from the transcript.

17 All right. What is tomorrow's lineup?

18 MS. LAWRENCE: Oh, the lineup for tomorrow, yes, we
19 have three police officers, we have Sergeant Detective Robert
12:54PM 20 Impemba, Trooper Shawn Riley and Trooper Carlos Rivera will be
21 the first three witnesses who will be taking the stand.

22 THE COURT: We'll be on a normal break schedule again
23 tomorrow. Again, I guess I should check with defense counsel,
24 on everyone's assurance that we are on track, we are not
25 following behind.

1 MR. POHL: I was going to supplement what Ms. Lawrence
2 said. I doubt that those three witnesses are going to take us
3 through tomorrow. They're short. I expect we'll provide
4 additional names to defense counsel about that.

5 THE COURT: All right.

6 MR. POHL: So I think if the Court was looking at the
7 witness list and looking at the time and thinking and sort of
8 calculating that all of those people might, if those were all
9 rough estimates, that we'd be long.

12:55PM 10 THE COURT: I can't do that because the first few
11 witnesses tend to be the lengthiest. You tend to call the most
12 important witnesses, and it tends to have the most
13 cross-examination, but, you know, we'll have to see how it
14 goes.

15 MR. POHL: I think we'll be moving rapidly tomorrow,
16 your Honor.

17 THE COURT: Mr. Murphy.

18 MR. MURPHY: Can we have a sidebar, your Honor?

19 THE COURT: Yes.

12:56PM 20 (SIDEBAR CONFERENCE WAS HELD AS FOLLOWS:)

21 MR. MURPHY: During the break, I was approached by a
22 woman in the back of the courtroom, whose name apparently is
23 Michelle McPhee asking me for the exhibits that were offered by
24 the defense and admitted during the case. She told me, I have
25 no idea whether this is true --

1 THE COURT: Is this a radio person, Michelle McPhee?

2 MR. MURPHY: I'm afraid I think it is, your Honor. I
3 wish I hadn't said that on the transcript now. She asked me
4 for a copy of the exhibits that had been admitted by the
5 defense and told me that the government had given the admitted
6 exhibits to her. I don't know whether that's true or not, but
7 I'm not -- I know it's a hassle for the Court sometimes to give
8 press access to admitted exhibits. If it would be helpful to
9 the Court, I'd be happy to give her copies of the ones that
12:56PM 10 were admitted, but I just want to make sure that, Number 1, I'm
11 not misunderstanding what's previously happening, and,
12 Number 2, that I'm not doing something that's going to run
13 afoul of any concern the Court or the government would have.

14 THE COURT: Well, I guess, you know, it's a public
15 proceeding. The exhibits are supposed to be public. I don't
16 know whether I can restrict anyone's access to it. I don't
17 have to order anyone to be helpful, but I don't know that I can
18 restrict it either.

19 Mr. Pohl, do you want to weigh in?

12:57PM 20 MR. POHL: We've had not just from Ms. McPhee but I
21 think from one or two other news organizations, we've had sort
22 of requests sort of on a daily basis to make available, request
23 to our press office to make available publicly admitted items,
24 and so we've been getting them on a daily basis, and now
25 Mr. Murphy has had their first one.

1 MR. MURPHY: From our end of it, there is a protective
2 order that we're not allowed to distribute the record.

3 THE COURT: Well, I think it certainly was my intent
4 that whatever the protective order did or didn't do, it doesn't
5 apply to exhibits. Again, it's a public proceeding. I mean, I
6 think I have to make pretty specific findings to seal them.
7 I'm happy to talk about that as a framework, but there is a
8 press right of access to trials.

9 MR. POHL: I think so far, I don't think there's
10 anything that I have concerns with the protective order about,
11 but I think it's possible that tomorrow if we get to a
12 cooperating witness, I think the jury would want to see an
13 unredacted version of the plea and cooperation agreement, and
14 that would be something that I would be concerned about
15 disclosing publicly.

16 THE COURT: I'm going to want that briefed again
17 because it's, you know, again, there's a press right, and, you
18 know, under *Richmond Newspapers* and that line of cases and
19 First Circuit cases argued by Mr. Murphy's former partner,
12:58PM 20 Jonathan Albino, as to *The Globe's* right of access, I'm very
21 unclear what I have power to seal, and, if so, under what
22 circumstances, so I'm going to need guidance from the parties
23 and the government. My assumption is everything is certainly
24 public to start with.

25 MR. POHL: Well, I'll start by talking about it with

1 counsel, and we can talk about it in the morning.

2 THE COURT: Okay. But, again, even if counsel agree
3 doesn't necessarily answer the question.

4 MR. POHL: Right.

5 MR. MURPHY: Thank you, your Honor.

6 THE COURT: Thank you. 8:30 tomorrow.

7 THE CLERK: All rise.

8 (Whereupon, the hearing was adjourned at 12:59 p.m.)

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1 C E R T I F I C A T E
23 UNITED STATES DISTRICT COURT)
4 DISTRICT OF MASSACHUSETTS) ss.
5 CITY OF BOSTON)
67 I do hereby certify that the foregoing transcript was
8 recorded by me stenographically at the time and place aforesaid
9 in Criminal Action No. 15-10338-FDS, UNITED STATES vs. HERZZON
10 SANDOVAL, et al., and thereafter by me reduced to typewriting
11 and is a true and accurate record of the proceedings.

12 Dated this 7th day of June, 2018.

13 s/s Valerie A. O'Hara
1415 VALERIE A. O'HARA
16 OFFICIAL COURT REPORTER
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